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LOCKE (1958)

The Political Philosophy of John Locke

A course offered in the winter quarter, 1958
The Department of Political Science, The University of Chicago

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Introduction
Session 1: January 6, 1958

Leo Strauss: Let us begin at the beginning. Why do we study such a book as Locke's *Treatises of Government*? What would you say? After all, do we not have much more urgent things to do? There is not a word in it about our present situation. I don't have to labor that point. Why do we read this kind of thing? We must not take that for granted. What would you say?

Student: I suppose the historian would say as a tool for the understanding of English constitutional history. But beyond this, I would think it would be of value to see the development of the modern theory of natural right and the consent of the governed.

LS: But is there not a more obvious reason, a reason which every high school senior, at least, would know?

Student: In connection with Jefferson and the Declaration of Independence.

LS: That's it. In other words, to say nothing of other famous documents, the Declaration of Independence is based on Locke. Since we have to mention this document anyway, what is the precise relation of Locke and the Declaration of Independence?

Student: Jefferson took some of his ideas on natural right and the right of the people to choose their own government from Locke. The Declaration of Independence is a natural right document, to the best of my knowledge, and a good deal of its argument is taken from Locke.

LS: How can you prove that?

Student: One can see it in the text of the Declaration. When Jefferson first used the statement "life, liberty, and property," later changed to "the pursuit of happiness," he was using Locke's formulation.

LS: But it is even more specific. There are some sentences which are literally taken over from Locke. For example, the phrase "not for transient causes," and so on. [1]There is no doubt that the Declaration of Independence was based on this thought. But you said that Jefferson changed a part of Locke.

Student: Yes,[2] I believe that [originally] he had intended to say, "All men are endowed by their creator with certain inalienable rights, and among these are life, liberty, and property." I believe he changed this to "the pursuit of happiness" because there was some objection or common bias against the aristocratic notion of property.

LS: I am almost certain that you are wrong. I am almost certain that there was never any question of property. If my memory does not deceive me, the formula goes back to Mason's South Carolina formula, where life, liberty, and the pursuit of happiness, not property, was

indicated.[i] But at any rate, the most obvious difference between the Declaration of Independence and Locke is that the key third[3] natural right in Locke is property, and in the Declaration of Independence [it] is not property but the pursuit of happiness. That is, of course, a very great change. Whether it can be explained in the way in which you explain it, that Jefferson was opposed to a property-oriented natural right doctrine, or not is a very difficult question. There could be given a more technical or theoretical reason. The view that there is no natural right to property is based on the premise that there is no property prior to the establishment of civil society. That view can be held on entirely theoretical grounds, and then it can be said that on these grounds there cannot be a natural right to property. That view (and again I have to rely on my memory on this point) was held by Lord [Kames],[ii] who[m] Jefferson used. This [view] was held by people other than this Scottish jurist, but it seems that he was one of the more important people holding it.

On the other hand, what was Jefferson's chief preoccupation in this early period in his activities in Virginia and so on? Wasn't he particularly concerned with religious freedom? Could not religious freedom be subsumed under the right to the pursuit of happiness? Because the right to the pursuit of happiness does not specify that this happiness must be earthly happiness. This could be of value, although we cannot go into this question now. At any rate, there is obviously an important connection, but also an important difference, between the Declaration of Independence and Locke.

Let us go back to the question from which we started. We raised the question: Why we should study such books as Locke's? And the answer given would be something like this. Locke's *Treatises of Government* exercised a very great influence both on American and British thought, opinion, and action. But we must consider the horizon in which this whole problem arises. We presuppose that it is reasonable to be concerned with an analysis, say, of American society. Now an essential part of every society is the ideas which permeate the society and give it its character. In order to understand these ideas, it is necessary in some cases to go back to the classical proponents of those ideas—in our case, [to] Locke. So the premise of the whole enterprise, and the perspective of it, is the obvious necessity of having a proper analysis of our society. That makes sense; at least it is sufficiently commonsensical not to question that. But can we leave it at that? Can we leave it at such an approach: We want to understand American society; one of the fundamental documents of America is the Declaration of Independence; in order to understand the Declaration of Independence, it is necessary to have read Locke's *Treatises of Government*? Is this sufficient?

Must we not also pursue from this same starting point—i.e., American society and the ideas giving it its character, as well as the origin of these ideas—another direction[4]? Assuming we have understood this idea of a right to life, liberty, and pursuit of happiness, or property, what question arises—a question which is as important as the purely historical question, to say the least?

Student: The validity.

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[i] In fact, Mason mentions both property and pursuit of happiness. See George Mason, "Virginia Declaration of Rights, 1776," in George Mason, *The Papers of George Mason, 1725-1792*, ed. Robert A. Rutland (Chapel Hill: University of North Carolina Press, 1970) 1: 274-76.

[ii] Henry Home, Lord Kames (1696-1782) was a philosopher and jurist of the Scottish Enlightenment. The work to which Strauss refers is Kames's *Historical Law Tracts*, on which Jefferson made extensive notes in his *Commonplace Book*.

LS: The validity. In other words, it is not enough to know that ideas x, y, and so on play a role in a given society; it is also important to know the quality of these ideas. Are they true or valid, or untrue? So let us now look at the problem from this point of view. In a way, this is a much more simple and more necessary approach. We seek the political truth, and this has in itself nothing to do with any books. But a very practical consideration enters: the difficulty of knowing that truth. Therefore we have the need for competent assistance, the need for the works of the great thinkers who can be presumed to be more valuable than most, perhaps all, of us. So if we approach Locke from this point of view, we expect [to find] in Locke[5] some help toward the political truth—perhaps the truth itself, or at least a very important error. To understand an important error is of course a great help toward understanding the truth. Here we make another presupposition which is worth a certain consideration. We assume here that Locke is talking about the same things fundamentally with which we are concerned, that Locke's problem is fundamentally the same problem as our problem. But we do not yet know whether Locke's answer is acceptable to us. We have or imply this notion: that there is a fundamental political problem, and this fundamental political problem permits of a variety of answers which have theoretically the same status as the problem. If the problem is, so to speak, eternal, or at least coeval with man, then the alternative answers will have this same status. Let us speak of a timeless problem and timeless alternatives. Does this make sense, that there could be such problems which are raised at all times, if not always with the same degree of clarity? So the answers to these problems could in principle have been given at any time.

Let us look for some examples, otherwise the question will not become sufficiently clear. Have you ever heard of such a view? In reading a contemporary thinker or writer—perhaps not all thinkers are writers and all writers thinkers—we are reminded of something, a thought, which is very old. We say that this is the same position, the same answer, to the same question. Have you ever come across such phenomena? We are speaking of very elementary things here.

Student: One finds continual emphasis on the elementary urges: eating and so on.

LS: That would be clear proof that such a thing exists; but still, eating is not as such a theoretical problem. Let us look at a theoretical problem. You are perfectly right in what you say, of course, because thinking is as much a part of man's constitution as the need for food.

Student: As one example, Karl Popper's whole book, *The Open Society*, is based on this subject.[iii]

LS: I think I have never read that book, so you will have to tell me something about it.

Student: It is a book trying to show how various thinkers from Plato through Hegel answer the question of the possibility of democratic society in theory.

LS: In other words, it was the same problem: Is democracy good or bad? And it was answered either with yes or no, so to say, at all times. All right. But a more common example would be, for instance, when people speak of Machiavelli, they are (we all are, for that matter) reminded of certain doctrines or theses we find in Plato—[that of] Thrasymachus, for example, [in] book 1 of the *Republic*. We may also be reminded of the Athenian

[iii] Karl R. Popper, *The Open Society and Its Enemies*, 2 vols. (London: Routledge, 1945).

ambassador[s] to Melos in Thucydides's[6] [history]. In other words, a kind of complete disregard of moral considerations in politics which is believed to be characteristic of Machiavelli, we find equally in these ancient men. Or to take an example a bit closer to us, let me read to you a passage from Aristotle's[7] *Politics*:

"But the end of the state is not mere life; it is, rather, a good quality of life . . . It is not the end of the state to provide an alliance for mutual defense against all injury, or to ease exchange and promote economic intercourse . . . [In states which have this character—LS] neither of the parties concerns itself to ensure a proper quality of character among the members of the other; neither of them seeks to ensure that all who are included in the scope of the treaties shall be free from injustice and from any form of vice; and neither of them goes beyond the aim of preventing its own members from committing injustice against the members of the other. But it is the cardinal issue of goodness or badness in the life of the polis which always engages the attention of any state that concerns itself to secure a system of good laws well obeyed. The conclusion which clearly follows is that any polis which is truly so called, and is not merely one in name, must devote itself to the end of encouraging goodness. Otherwise, a political association sinks into a mere alliance, which only differs in space from other forms of alliance where the members live at a distance from one another. Otherwise, too, law becomes a mere covenant instead of being, as it should be, a rule of life such as will make the members of a polis good and just."[iv]

In other words, Aristotle here contrasts two opposite interpretations of political[8] association: the one[9] sees its function in making the members virtuous, to use the old-fashioned expression; the other view is that the function of civil society, or political society, consists in making possible peaceable exchange and preventing everything which would endanger that peaceable exchange, such as fraud and force, without being concerned about the character of its members beyond this point. Now such a view of civil society as Aristotle here sketches and rejects has occurred very frequently in modern times, and one can perhaps say that it has been predominant in modern times, certainly in men like Hobbes, Locke, and quite a few others. So we have here a fundamental understanding of the state which was the same, say, in the nineteenth and twentieth century as it was long ago, so it does make sense to speak of timeless problems and of timeless answers to these problems.

But this is not sufficient. Time does play a role. If the view I sketched first were simply correct, the sequence of the great political thinkers would be purely accidental. But as we find out when studying the sequence of these thinkers, or what we call the history of political thought,[10] we see there is a certain order in the sequence. Is this general statement intelligible: that the sequence of these thinkers is not *merely* accidental, although accident does play a role, but that the sequence also has a certain order? For example, if a man makes a statement that the doctrine of Marx could not possibly have preceded the doctrine of Hegel,[11] but that it makes sense that Marx's doctrine followed that of Hegel, I think this has some truth in it. There are other examples of the same kind. Now if we bring up the most important example of[12] such[13] temporal, and at the same time meaningful, difference[s] between the great political thinkers, the example would be the difference between modern thought and premodern thought. In other words, in spite of the fact that there were such doctrines reminding of Machiavelli in classical times and doctrines reminding of Locke and Hobbes in classical times, there is a possibility that all these modern thinkers have something very

[iv] Aristotle, *Politics* 1280a31-b12. The translation is from Ernest Barker, *The Politics of Aristotle* (Oxford: Clarendon, 1946).

important in common which distinguishes them from all premodern thinkers, and these two distinctions cross each other . . . Is this general possibility clear? Otherwise, it is no use that I go on. Is this intelligible? Let me try to present it graphically. Let us assume that this is the same problem, the same fundamental problem, and that there is this and this fundamental alternative: a Machiavellian type of doctrine, a Lockean type of doctrine, and an Aristotelian type of doctrine. And we find these types of doctrines, so to speak, at all times. But there is an additional possibility: that these[14] types are crucially affected by a distinction which cuts across, a distinction between premodern and modern thought, so that all modern thinkers, in spite of the great opposition among them, have something very important in common and[15] all premodern or ancient thinkers, in spite of all the disagreements among them, have something very important in common. Does this possibility make sense?

I leave it open what this element in common is, but that there is something very important is clear. Let us present it as follows. Let us assume that the view is correct that Thrasymachus, in the first book of the *Republic*, had something in common with Machiavelli, and that some sophist called [Lycophron][v] in Aristotle's time had something very important in common with Locke. There could still be this possibility, that Machiavelli and Locke have something in common which distinguishes them from Thrasymachus and these other representatives of earlier thought. Is there something to this hypothesis? We have to consider that. I will try to present this in a very simple form. This would need, of course, very long footnotes, but I believe it will reach at a certain point an immediate intelligibility. Let us raise this question: How did the most influential premodern thinker view philosophy, and how is philosophy viewed today? I will justify that and also specify it.

The most influential thinker of premodern times can be said to have been Aristotle. And I will not go into any question of a deeper understanding of philosophy. I will limit myself to the most external and bureaucratic aspects, the division of philosophy into disciplines. Now how did Aristotle divide philosophy? He divided philosophy in the first place into two main parts, theoretical and practical. Then he subdivided each into three: mathematics; physics; and metaphysics, which could also be called theology. "Physics" means all natural science. Now what were the subdivisions within the practical? Ethics, economics, and politics. Then Aristotle said there is a seventh part, which is not a part proper but a kind of prelude to the whole; and that he or his pupils called logic. This was the division of philosophy. Now what would be the division of philosophy today? It is something very simple, something you could find out by looking at a few announcements of a few different universities.

Student: Logic would be a part of philosophy. Of course there would be a philosophy of the various so-called disciplines, e.g., religion and so on.

LS: Religion is not a discipline in itself, at least how you mean it here. Today, I believe we can immediately add epistemology, although that is frequently taken together with logic.

Student: There is also a philosophy of history in the theoretical [sense].

LS: Certainly. Everything which comes to your head, provided it is borne out by any announcements.

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[v] Lacuna in transcript; "Lycophron" supplied. According to Aristotle, Lycophron presented a view of law as merely a compact, merely "a guarantor among [citizens] of the just things, but not the sort of thing to make the citizens good and just." Aristotle, *Politics* 1280b10-13, trans. Carnes Lord (Chicago: University of Chicago Press, 2nd ed., 2013).

Student: Philosophy of art.

LS: I believe they also call this aesthetics. But how can you forget ethics? And what else?

Student: Poetics.

LS: But that is no longer treated in this way. Do you know where poetics occurs in the traditional order, the Aristotelian order? As a part of logic—one form of proving things. But now let us come to consider what are the differences. We don't have to go into every point, but the salient things are very helpful. But first, one footnote. This division which I gave here is the Aristotelian division. It was not accepted by all philosophic schools. I take it only because it facilitates this contrast. Well, what about mathematics, physics, or economics, for that matter? Are they regarded as parts of philosophy today? Where do they come in?

Student: They usually come in under natural science. Mathematics would have a sort of distinction of its own, although it would not come under philosophy.

LS: This is the only point I am interested in. Nor would economics.

Student: It would appear to be something of an inversion in that Aristotle appropriated science to philosophy, whereas at present philosophy is subordinate to science. Those who consider this at present presuppose that the basis of any philosophy is the scientific method . . .

LS: That has something to do with what I am driving at.

Student: Could you say that epistemology, in a way, devours these other things?

LS: That is not quite fair, because there are people who are concerned with aesthetics and would absolutely refuse that. But the simple point, and the first thing we have to observe, is this. In our present-day thought we make a distinction between philosophy and science, a distinction which is absent from Aristotle. Aristotle doesn't give us a division of philosophy only;[16] he gives us a division of knowledge as such. This implies—and this is crucial—that certain parts of philosophy, of philosophy in the old sense, are now outside of philosophy completely, e.g., mathematics, physics, and economics. Political science perhaps also belongs there, clearly in this case. But the most important example of these three is physics, which means here natural science as a whole. Now what does that mean? Because to maintain in passing that mathematics is in a way something outside of philosophy was always granted practically: people spoke of philosophers and mathematicians already in Plato's time. They are two different things. The interesting problem is physics or natural science. Why?

Student: Didn't this dualism between philosophy and science come forth as a result of the discoveries of the sixteenth and seventeenth centuries in natural science?

LS: This has something to do with it, but we must state it a bit more precisely.

Student: This is a little bit of an oversimplification, but natural science today would be considered as the highest form of knowledge—in fact, in a way the only legitimate form.

LS: In a way, yes, but that is all a consequence of one point which I will try to state. Up to the emergence of modern science in the seventeenth century, physics was always a philosophical discipline proper, by which I mean you could not be a physicist without belonging to a specific philosophic school. There was Aristotelian physics, there was Platonic physics, there was Epicurean physics, Stoic physics, and so on. There was no philosophically neutral natural science. This is the most striking feature of modern thought as distinguished from premodern thought: the establishment of philosophically neutral sciences, which by virtue of their philosophic neutrality lay a claim to intellectual superiority—so much so that they become, or tend to become, an authority for philosophy. That applies especially, of course, to the natural sciences, but we find parallels to that in the social sciences as well. Now the most interesting thing in social science is economics. For Aristotle, economics is as much a part of philosophy as ethics, whereas today economics has the same cognitive status as any of the natural sciences, at least to the extent to which it is a science. So this is then the first crucial difference: the establishment of philosophically neutral sciences which confront philosophy with the claim to be authoritative for philosophy. How this happens, you all know from your high school: that this new physics, which began with Galileo and culminated in Newton, proved to be superior to any available alternatives, and it proved to be possible to establish the characteristic themes of this physics against any doubt or question. This had never happened before. All future developments in physics, including the more modern developments,[17] [are] only derivative from this crucial development in the seventeenth century.

Philosophy has been deprived of a considerable number of disciplines which formerly were regarded as philosophic. But how does the rump of philosophy look? What is characteristic of it? What is characteristic of this modern notion of philosophy—I disregard here metaphysics—as distinguished from Aristotle? What is the common formula you can apply to all of them, to all these disciplines, e.g., logic, epistemology, philosophy of history, art, religion, and so on?

Student: [. . .]

LS: No. That is [not] exactly the point, but that is a very important point you mention. The distinction between theoretical and practical has been abolished and one could say (although that is a bit subtle) that all these disciplines are neither simply theoretical nor simply practical. The distinction [no longer applies][18] to it properly. But what is it, as far as the subject matter of all these disciplines is concerned? There is something very obvious.

Student: They are independent of one another.

LS: That is true to some extent, but I was thinking more about the subject matter. What do they all have in common? May I suggest a simple word: they all deal with *man*, human thought, human science, human interests, human arts, human religions. For that is of course the difference between philosophy of religion and theology: theology deals with god and philosophy of religion deals with man, with man's concern with god. Now an older formula for what I call man was the consciousness or the human mind. If you think of some of the most famous modern book titles, e.g., Locke's *Essay Concerning Human Understanding*, Berkeley's *Principles of Human Knowledge*, Hume's *Treatise of Human Nature*, Kant's *Critique of Pure Reason*, Hegel's *Phenomenology of Spirit*, and so on, the mind, the human mind, the consciousness, is the theme of modern philosophy to a much higher degree than it was in former times. In former times, for example, if you said "metaphysics" it meant

something—perhaps you could say God; perhaps the whole cosmic order was the theme of the older kind of philosophy. The whole cosmic order is now the theme of natural science and no longer philosophy. Philosophy has to do with it only indirectly, insofar as human knowledge of the cosmic order, science of it, human activity, is still in a way the theme of philosophy.

Now I would like to add another point to indicate that there is really something. You can say I am trying to prove something trivial, but one must sometimes bother to make a bit clearer to oneself what is generally admitted in order not to become mistaken, dangerously mistaken. Now if one looks back at this great divide which falls generally speaking in the seventeenth century and the most famous name . . . But who is generally regarded as the founder of modern philosophy, at least in the textbook version?

Student: Descartes.

LS: Yes. It is a perfectly intelligible and defensible thesis. Now let us look for one moment at Descartes, because in Descartes we can perhaps see how these things hang together. Prior to Descartes, and the starting point for Descartes, was this. Here we have these many philosophic books, a tremendous tradition going back to early antiquity. And what has come out of that? What is the value of that tradition? Descartes's answer: Zero! Because there is not a single point which is uncontested. There is only one glimmer of light, one available discipline which is really healthy and good, and that is mathematics. Everything is contested, everything is doubtful, and the simple proof of this is the fact that the whole philosophic tradition is split into two branches. One[19] [was] called the dogmatics, and the other[20] [was] called the skeptics. If philosophy had ever become truly a science, there could not be skepticism. The very existence of skepticism and the very survival and persistence of skepticism proves that philosophy has not yet reached the status of science. Descartes wants to change that radically, and he proceeds, generally speaking, in this way. He says the skeptics are right. The skeptics are right, up to a point. We must start from the most extreme form of skepticism, doubt of everything: "Everything must be doubted." And then, by this very act of the most radical doubt, we will discover a certainty which is beyond all possible doubt. And starting from that absolute certainty, we can then construct an absolutely safe and foolproof science. And what was that certainty which will resist any possible doubt?

Student: The consciousness that I exist.

LS: Let us say, my consciousness. I will not go into the details of Descartes's formulation here. The consciousness, the ego and its ideas—that is the only absolute basis. And here we see that the ego, the consciousness, in a certain enlargement we may say the human mind, becomes the primary and eventually the only content of philosophy. But let us also consider the other aspects. Descartes wants to arrive, and believed [himself] to have arrived, at a genuine science, a perfect science, a dogmatic science. "Dogmatic" means here only a science which can teach . . . There is a dogmatic teaching, but this dogmatic teaching is distinguished from all earlier dogmatic teachings by the fact that it is based on the most extreme skepticism. So if we say dogmatism based on skepticism, we can say that is the formula for what constitutes modern philosophy, at least in this classic or heroic stage of the seventeenth century. And don't believe that this is merely something in the past: if you talk today to the more radical types of social scientists, you find out within a short time that they still have this Cartesian dogmatism based on skepticism. What is characteristic of social science in the extreme form? The rejection of all primary knowledge, of all knowledge

preceding scientific knowledge. You know of certain attempts to prove some truth about man, or about specific groups of men, which every child knows, the idea being that this cannot be known if it has not been established by means of strictly scientific procedure. Everything which has not been established in this way has the character of folklore. You must have heard this, or perhaps some other terms which they may use. The scientific approach emerges by virtue of a radical break with our prescientific, ordinary, commonsense understanding of things. That such a break is required, that is precisely the Cartesian heritage. And just as in Descartes, at least as far as knowledge of the visible universe was concerned, the true science must be mathematical, the same is still noticeable in present-day social science. All true knowledge has the character of quantitative knowledge, and what we know independently of it, for example, [that] most people like this or that, is a wholly unscientific statement. What we must do is find out in numerical terms how large a percentage of the population really does have that preference. What I am driving at is that while Descartes's work, or the work of the seventeenth century altogether, has of course been overlaid by many later developments, it still is discernible up to the present day. So it makes sense then to speak of a fundamental difference between modern thought and premodern thought. Are these points clear, or at least apparently clear? Do you recognize some phenomena which you know independently in what I have said?

Let me add then one more point, and I am willing to repeat the question immediately. I would like to illustrate this difference now by examples taken from political philosophy, because this fundamental change expressed itself in political philosophy in particular. In Descartes and in his followers we see the primacy of the ego, the consciousness, over against the whole order, the cosmic or divine order. Now there is a simple correspondence to that in political thought. Descartes wrote an ethical work called *The Passions of the Soul*, in which, I believe, there is not a single reference to duties. But in the most important paragraph of that work, there is an emphatic assertion of rights. The theoretical primacy of the *ego cogito* ("I think") finds its moral–political expression in the primacy of rights as distinguished from duties. I add now a general observation, that generally speaking, especially in the Middle Ages and in the early modern times, political thought frequently took on the form of a teaching regarding natural law, so that the political teaching was to a certain extent even identical with the teaching regarding natural law. And within this teaching regarding natural law, we find this fundamental change taking place in the seventeenth century: that whereas the traditional natural law teaching spoke either exclusively or chiefly of the duties of man, this modern kind of natural law teaching speaks primarily or chiefly of the rights of man. Certain rights of man, or natural rights, were of course implied in the older natural law teaching, but they were mostly left in the state of implication. In the modern way of thinking, which appears most clearly in Hobbes, the primary moral phenomenon is not duty but right. It has often been said that laws and rights are necessarily correlative. Let us grant that this is true, but there still remains this crucial practical difference: whether the emphasis is put upon the duties or upon the rights. And in this respect we find a very clear distinction between the thinkers of the Middle Ages, especially, and of classical antiquity, on the one hand, and those of the seventeenth and eighteenth century. This can also[21] be [well] understood if we think of the fundamental change in theoretical matters, in general philosophy, namely, the primacy of the thinking ego as compared with the objective cosmic or divine order. That was only meant to illustrate the assertion to which I for one have been driven again and again in my studies: that one must admit that a radical change in human orientation has occurred in the early modern times, [in] the seventeenth or sixteenth century, and that this has affected all later thought up to the present day, and that this new thing, which is difficult to define, which entered during this period, is not to be found in any earlier thought.

Student: How would you fit into your scheme those scientific philosophers and those scientists who don't seem to regard scientific knowledge in terms of certainty at all, but rather in terms of approximations and of approaches which are always open? . . . philosophy of science like that of Dewey.

LS: That is a very uninteresting difference, because these men—let us speak rather of the scientists themselves who are perfectly willing to revise every theory—take it for granted that these theses of science have a higher dignity than what we say about man. In other words, while there is an openness, there is science; yet science has an exactness, a peculiar theoretical dignity which is of course in no way questioned by the fact that[22] [these men] are sure there will never be the final solution to the cosmological problem, as Newton, for example, regarded it as possible. In other words, in order to see how little skeptical these people are, you have only to consider ancient skepticism, which was really skepticism and denied of course any cognitive value to mathematics, to physics, to medicine, or whatever have you. In short, what you suggest is a refinement but not a fundamental change of it.

Student: Insofar as the thought of antiquity and the Middle Ages emphasized duty instead of right, would you consider modern forms of totalitarianism as retrogression to antiquity and the Middle Ages?

LS: You have taken a somewhat narrow view of right. Can you reduce what you understand by totalitarianism to a simple proposition? I will not quibble with words, but I would like to see it.

Student: That the state takes more than it gives to the individual; that is, that the individual becomes less important as an end in himself than as a creature of the state.

LS: What about the state? Can the state do what it wants?

Student: Yes, its will is a law unto itself.

LS: You must take what I said earlier somewhat more broadly. This modern doctrine can be said to branch out in two directions: the one is the natural right doctrine, say, as you know it from Paine and others; but the other expressed itself most clearly in the modern doctrine of sovereignty, the sovereign state or the sovereignty of the government or whatever it may be. Now [in the extreme cases], just as in that liberal version the individual is absolutely sovereign,[23] in the statist doctrine the state has this absolute sovereignty. There is nothing higher than man, either the individual or the collective. That is the common characteristic of both. The doctrine of sovereignty is as specifically modern as the doctrine of the rights of man. The older doctrines which had any political meaning took it for granted that there is something superior to man, individually or collectively. Therefore the difference remains.

Student: Perhaps you can clarify another point here. Insofar as antiquity and the Middle Ages employed a conception of natural law in their theory of the best political order, was the *polis* sovereign because it embodied the natural law, or was the natural law merely a front for the sovereignty of the *polis*?

LS: We are not now speaking of the empirical *polis*, which was as good or as bad as empirical society was at all times. But if we take the understanding of the issue by the

philosophers, then the *polis* owes any rights it possesses in the last resort to its moral function. In that sense, we use this more common formula: the *polis* is subject to the natural law. Any rights it has are derivative from its duties. While there is a great difference between whether you start from the individual or from the society, this question I am now stating applies equally to both forms of stating the problem.

Student: Would you say empirically that the state is derived from natural law, and not law derived from the state?

LS: That is what I meant. At any rate subject to it, but you can also say derived. It is not wrong to say that, although it is not deep enough. In other words, totalitarianism can be said to be an extreme form of the modern doctrine of sovereignty, that the state is not subject to any law except—no, not to any law, because any law which it makes it can of course also unmake. This means that the theory of sovereignty fully developed is incompatible with natural law. The totalitarian doctrine is a special form of that, but one would have to describe that more specifically.

Student: A side point: Do you feel that insofar as the *polis*, as you say, could be good or bad, is bad or corrupt, is it then related to modern forms of totalitarianism?

LS: It all depends. If you take the view of an anonymous unscrupulous politician in Greece, well, he will be as bad as an anonymous unscrupulous politician now. So the only clear and possible distinction is that between the great teachings. And here, by the very fact that it is a bad *polis*, it is indicated that it is not something by which you take your orientation as a reasonable and decent man. It is not so much the actual distribution of virtue and vice throughout history, which is very hard to establish, as how men judged of it. Regarding the latter point, it is more possible to know something, especially as far as the famous writers are concerned.

Is there any other point you would like to bring up in connection with this question which I have tried to discuss up to now, which is: Why do we read such books?

Student: [. . .]

LS: That would be a gross exaggeration and wrong. I only spoke of what is characteristically modern. There are of course in modern times quite a few people, as there are in all times, who were in fundamental disagreement with this modern turning away from the older. But repeat your statement.

Student: I only mentioned it because Locke is such a modern one and I think he stresses such natural or self-evident truths.

LS: Sure, just as Descartes does, but what is Locke's whole method? He called it himself, or accepted the expression, the "way of ideas." What does that mean? It has nothing to do with Plato's ideas. That means Descartes's beginning, beginning with what is present in the human mind. These are the ideas in the Lockean sense: the idea of red, the idea of a chair, or what have you. These evidences are all within the consciousness, whatever that may mean. Locke's whole work is called *An Essay on Human Understanding*, and not *An Essay on the Universe*, or *An Essay on God*, or something like that. The common word for that, which I

could have used if I had wanted to, is "subjectivism." The subject is the great theme—the thinking subject.[vi]

Student: . . . a cosmological worldview like that of antiquity. I was wondering if this emphasis is only partial, inasmuch as the modern philosophy of science, e.g., logical positivism, philosophical analysis, or whatever you call it, emphasizes the bifurcation of philosophy into what they call the value theory and the philosophy of science. They are very strictly separated and in many cases the human consideration is called meaningless . . .

LS: I know. That is a very extreme form, but it finds its place. Shall I give you a graphic presentation of that position? [LS writes on the blackboard] I have considered that.

Student: In other words, it is an emphasis on avoidance.

LS: Sure. It is still more extreme in this direction than the more average position. Now let us then turn to the second elementary consideration which one must state from time to time. Granted that such books[24] [as] Locke's *Civil Government* must be read and must be studied, how must they be studied? Here one distinction, I believe, is of special importance. An answer frequently given is that we must study such books "historically." Now what do people mean by that? That would be a meaningless sentence if there were not an alternative way of studying it, that is, unhistorically.

Student: Rather than studying them in regard to the school in which several men living several centuries apart would be classed, you would study them in the historical circumstances, their relation to the conditions of the time, what shaped the particular aspects of their work, and so on.

LS: Yes. It is the background or the setting. We have to understand these thoughts within their historical setting. Well, to take another example—other than Locke, in order not to prejudge the issue there: if we had to study Machiavelli, for example, we know of course that he was a Renaissance thinker, and so we have to understand him against the background of the Renaissance. It is a very common view. One question: How do we know anything of the Renaissance? As scientific men we cannot simply take these things for granted. How do we know of them? How do we know of the Renaissance?

Student: Well, through these studies by men like Machiavelli who wrote during the Renaissance . . .

LS: I see. In other words, we know really from Machiavelli and others what "Renaissance" could mean, and then we arrive at certain hypotheses; and then in reading Machiavelli, instead of going on reading, we say, "Oh, that's Renaissance." We refer Machiavelli to something which is infinitely vaguer than Machiavelli's doctrine, which we have in his books, can possibly be.

Student: Granted this would be true especially of classical antiquity, but for the Renaissance, isn't there a certain amount of things like manor rolls and other writings that were never to be published in quantity—histories of families, genealogies, portraits, and so on?

[vi] There is a break in the tape at this point.

LS: Surely, but the question is: How do we know that this is of any relevance for Machiavelli?

Student: Well, if we were trying to determine some parts about the Renaissance, wouldn't it be of importance to learn that a lot of the bishops were illegitimate children and so forth, and the effect this would have on the church and not being attached to a family?

LS: But how do you know that this is of greater importance to Machiavelli than the various species of fishes to be found in the Mediterranean? How do you know that? We can know it only if Machiavelli himself is concerned with bishops. And then, in case what Machiavelli says about the bishops doesn't make any sense on the basis of what you know of bishops, then indeed you are compelled to find out something about bishops around that time. But this is the only correct procedure, and not simply to go out for the Renaissance and expect there all kinds of clues which may either be no clues at all, or else wholly impertinent, like the status of fishes in the Mediterranean Sea about the year 1500. In other words, the procedure is really circular. We know of [the] Renaissance only by studying such people like Machiavelli, and then we use that result or alleged result for understanding Machiavelli. The only way, of course, is to begin by studying Machiavelli himself. There is another consideration which must be considered: the dogmatic assumption that every thinker must be understood from his time. This disregards the possibility that a great man, or a not so great man, may have thought against his time. And then his uniqueness, his rebellion against this thought, would be completely blurred.

But the most important, the most simple, consideration against the so-called historical understanding is a very simple one. No one would expect that a man would write a history of music if he is not himself a musical man. If a man [who] is completely deaf and in addition, as distinguished from Beethoven, never had any understanding of music would become a historian of music, he would be the laugh of the town. But in the case of the history of political thought, it seems to be regarded as possible that you don't have to care a bit about political thought; you can nevertheless study it. To put it in a very simple formula: If there is not a certain fundamental sympathy between the historian and his subject matter, nothing good can come out of that. If one does not share, say, Locke's concern with finding the true foundation of civil society, these pages of Locke remain wholly mute and obscure. This does not mean, of course, that the form in which Locke himself raised the question is necessarily immediately intelligible to us. We will see that this is by no means the case. But that means only that we have to seek a bit deeper from the very beginning, and to state the fundamental issue in such a nonprejudicial way that Locke cannot but have agreed with this question, a more general formulation of the question. And we must try to retrace the way from this most simple form of the question to the particular form which Locke uses. I believe I can make this more clear using some examples.

But first let me state the simple principle. The only possible way of a historical understanding of Locke's political teaching is the study of Locke's *Treatises* themselves. Everything we may know or hear about his family, party allegiance, and what have you, is utterly unimportant and can come in a very secondary manner only after we have understood his book. For example, that Locke had a certain half-Whiggish family tradition is utterly and entirely uninteresting. That his doctrine is Whiggish: if we know that, then we can say, "Oh, he was a bit prepared for that by his dad and granddad." But since we know other cases in which people had Whiggish ancestry and became Tories afterwards, there is no great value to

be attached to this kind of explanation.[vii] So we study Locke, but still the word "historical," which is applied in these matters or in this context, is not entirely meaningless. I will try to explain it by raising the question in this form. Why is some scholarship needed for a proper understanding of such books like Locke's *Treatises of Government*? In other words, why [is] that which is done in great books programs, of which I am personally very fond,[25] not quite sufficient? In other words, that we simply sit down, read, argue, etc.—why is something else needed and really indispensable? And not merely to show off as a very learned man, but because you think you can't go on without that. Well, let us take a simple example. Let us look at page 122 in the edition which I recommended, paragraph 4:

"To understand political power right, and derive it from its original, we must consider what state all men are naturally in, and that is a state of perfect freedom to order their actions and dispose of their possessions and persons as they think fit, within the bounds of the law of nature, without asking leave or depending upon the will of any other man.

"A state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another; there being nothing more evident than that creatures of the same species and rank, promiscuously born to all the same advantages of nature and the use of the same faculties, should also be equal one amongst another without subordination or subjection."[viii]

Now you have read that and the sentences are reasonably clear, but what difficulty arises immediately when you read that? After all, to read it as Locke meant it means to read it as if it were addressed to you and not merely to contemporaries. You are thinking about political power and the origin of political power, however you call it. You are confronted with this very general answer: that all men are by nature in a state of nature, that they are all free and equal.

You are not simple enough. That is the reason you can't answer my question. Well, the simple reaction would be: he says a mouthful. He doesn't prove that in any way. How do we know that there is a state of nature? Even if [there were], why should man be free and equal? How do we know? And as you will see when you go on, there is no proof [of it] to speak of[26] later [on]. So Locke makes here an assumption which is absolutely unevident to us, if we do not deceive ourselves. Well, but there is no assumption a man ever made which cannot be understood, which must not be understood. That is extremely elliptical, this statement. It cannot be sufficiently understood out of itself. What do we do in such a case? [27]Locke presupposes that[28] [we] grant him that, but we can't grant him that. Therefore, because he presupposes that it will be granted to him, he speaks extremely briefly about it. It is much too brief to be understood. What do you do in such a case? Locke presupposes that was an assumption; but at some point or other, that assumption had to be stated in a nonelliptical way.

Student: One could read his other words.

[vii] The term "Whiggish" here refers to the Whigs—that group within the English parliament who supported a constitutional monarchy but wished to exclude James, the Duke of York and Charles II's brother, from the English throne on the grounds of his Catholicism. The Tories, on the other hand, represented the more conservative tendencies of Charles II against those of parliament, and therefore supported a strong monarch to counterbalance the latter's powers.

[viii] *Second Treatise*, sec. 4, 122. Here and throughout, Strauss is using the following edition: John Locke, *Two Treatises of Government, with a Supplement, Patriarcha, by Robert Filmer*, ed. Thomas I. Cook (New York: Hafner, 1947). In the original transcript the quotation is abridged.

LS: Surely that is one way. But may I tell you a secret? That wouldn't help. So what do we do in such a case?

Student: [. . .]

LS: The ordinary expression or way of explaining this is that there was a tradition on which he built. And we must have some knowledge of that tradition if we want to understand Locke. Now if we go on and read the next paragraph: "This equality of men by nature the judicious Hooker looks upon as so evident in itself and beyond all question that he makes it the foundation of that obligation to mutual love amongst men on which he builds the duties we owe one another, and from whence he derives the great maxims of justice and charity."[ix]

We get at least one [piece of] information: that there was one earlier thinker whom Locke regarded very highly, the "judicious Hooker."[x] And the judicious Hooker can perhaps be expected to give us some clarification about these very obscure things, although the judicious Hooker, too, is said to look upon it as so evident in itself and beyond all question that he may not have explained it sufficiently. But still, we have at least a bit of light. Let us read Hooker! Now that, again, is not so terribly difficult, because it is sufficient for all practical purposes to read about fifty pages in Hooker's *Laws of Ecclesiastical Polity* to get all the information needed for a better understanding of Locke. What I am driving at is this. No great thinker is really fully self-explanatory. There is one very obvious reason for that: the terminologies change, for good or bad reasons. And in the moment their terminology has become more or less obsolete, it is no longer directly intelligible; and therefore one has to learn or relearn that terminology to some extent. But there is no secret or mystery about it. Because one can say this—and I would assert this without any qualification, waiting for objection: that there is no great book which I have ever seen in which we do not get from the author the signposts pointing us [to] which other books we should read in order to understand him more fully. So Locke tells us: Hooker. That is of some help, without any question. Whether it is of sufficient help is a matter we shall consider later. But we have in Locke's case another indication of what we must absolutely read if we want to understand him, and that he gives us in the *First Treatise*. The *First Treatise*, directed against the then well-known man called Sir Robert Filmer, who wrote a number of books, the most famous of which is *Patriarcha*, is a criticism of Sir Robert Filmer. Since this is so, it is necessary or at least desirable to read the *Patriarcha*, which we will do first thing next time.

But I would like to give you another little example to show you these simple difficulties and how they are in principle solvable. Let us turn to paragraph 15, which is on page 128. We have seen in the passage which we have read that Locke assumes that there is such a thing as the state of nature, an assumption wholly baseless in our opinion today. But Locke must have thought it necessary to assume that. Now let us read paragraph 15: "To those that say there were never any men in the state of nature . . . "[xi]

[ix] *Second Treatise*, sec. 5. In the original transcript the quotation is abridged.
[x] Richard Hooker (1554-1581). Hooker was a leading Anglican theologian, a defender of the established church against Puritan calls for reform. He was the author of the very influential *Of the Laws of Ecclesiastical Polity*, a text from which Locke frequently quotes in his *Second Treatise*.
[xi] *Second Treatise*, sec. 15.

In other words, Locke was familiar with the view, which we hold, that there were never any men in the state of nature: "I will not only oppose the authority of the judicious Hooker (*Eccl. Pol.*, lib. i., sect. 10), where he says . . . But I, moreover, affirm that all men are naturally in that state, and remain so till, by their own consents, they make themselves members of some politic society, and I doubt not, in the sequel of this discourse, to make it very clear. "[xii]

Yes. Now we must see whether he will make it very clear. But you see that Locke here also does something else. He quotes from Hooker, and if you read this quotation and even the context in which it occurs, you will see that the judicious Hooker doesn't say a word about the state of nature. But Locke indicated that. He said, "I, moreover," meaning going beyond Hooker, "affirm that all men are naturally," whereas Hooker at most had said that some men are accidentally in a state of nature. Another example of the same type may be found at the beginning of paragraph 13, page 127: "To this strange doctrine—viz., that in the state of nature every one has the executive power of the law of nature—I doubt not but it will be objected," [xiii] and so on. Here again Locke draws our attention to something which the judicious Hooker, or anyone else, did not do. A "strange doctrine" here means as much as a novel doctrine. That is the kind of thing that can be assumed to be characteristic of Locke, that in the state of nature everyone has the executive power of the law of nature; in other words, he is by nature entitled to avenge crimes against the state of nature. So here Locke himself draws our attention to an innovation which he made and gives us some direction in the understanding of what the peculiarity of his doctrine is. Now a last point, and then I come back to the beginning.

Locke's political doctrine proper has been laid down in this work, the *Two Treatises of Government*, which were published after the victorious revolution of 1688. The only tolerable edition of that is this one. All other editions reprint the last edition made while Locke was alive with all the printing errors of the same. Some things are wholly unintelligible. For example, the Everyman's Library edition[xiv] is a good example of this bad procedure. That is the best. A critical edition, I understand, is now in preparation.[xv] Of course there are also the *Letters on Toleration*, but they deal with the problem of toleration by itself and not with the political problem as a whole. It is necessary, and that we cannot do here with the short time at our disposal, to read in Locke's greatest work, the[29] *Essay Concerning Human Understanding*, the few passages dealing with the problem of natural law. There are very few of them, and I may indicate them to you on another occasion. It is also necessary to read his book, *The Reasonableness of Christianity*, which says a lot about the law of nature. But the most important thing now, after the discovery of these useful essays, is to read this book which has no title in Locke's manuscript but which the editor calls Locke's *Essays on the Law of Nature*.[xvi] That is really indispensable, after it is available to read it. It is wrong to call

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[xii] *Second Treatise*, sec. 15. Strauss appears to have omitted Locke's quotation of Hooker. In the original transcript the passage is abridged.

[xiii] *Second Treatise*, sec. 13. In the original transcript the passage is abridged.

[xiv] John Locke, *Of Civil Government: Two Treatises*, ed. William S. Carpenter (London: J. M. Dent, 1924).

[xv] Strauss is referring to the critical edition edited by Peter Laslett, which appeared in 1960 and which remains the standard edition of Locke's *Treatises*: John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1960).

[xvi] John Locke, *Essays on the Law of Nature*, ed. W. von Leyden (Oxford: Oxford University Press, 1954). A review of this volume by Strauss can be found in Leo Strauss, *What Is Political Philosophy? and Other Studies* (Glencoe, IL: Free Press, 1959), 197-220.

it essays; these are really disputations. [xvii] The title of each essay is a question. They are all in Latin but the editor added an English translation, so it is more[30] accessible. It deals with the question, for example, "Whether there is, or there exists, a natural law. —Yes."[xviii] All of these passages have the same form.

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[1] Deleted "but."
[2] Moved "originally."
[3] Deleted "right."
[4] Deleted "from this same starting point."
[5] Moved "to find"
[6] Deleted "'s *Histories*."
[7] Deleted "Book III, 1280 a-b."
[8] Deleted "interpretation of."
[9] Deleted "which."
[10] Deleted "then"
[11] Deleted "but."
[12] Deleted "differences, of such a temporal difference."
[13] Deleted "a."
[14] Deleted "kinds of."
[15] Deleted "that."
[16] Deleted "but."
[17] Deleted "is."
[18] Deleted "does no longer apply"
[19] Deleted "were."
[20] Deleted "were."
[21] Moved "well."
[22] Deleted "they."
[23] Moved "in the extreme cases."
[24] Deleted "like."
[25] Deleted "but why is this."
[26] Moved "of it."
[27] Deleted "in other words."
[28] Deleted "man."
[29] Changed from "*Essays*."
[30] Deleted "appropriate" and parentheses around "accessible."

[xvii] In a lecture entitled "Reason and Revelation" that Strauss delivered at the Hartford Theological Seminary in Hartford, Connecticut in January of 1948, Strauss says something concerning the term "disputation" that may be helpful: "Philosophy in its original sense is disputative rather than decisive. Disputation is possible only for people who are not concerned with decisions, who are not in a rush, for whom nothing is urgent except disputation. The anarchy of the systems, the *pudenda varietas philosophorum* is no objection whatever to philosophy." This lecture was published as part of an appendix to Heinrich Meier, *Leo Strauss and the Theologico-Political Problem*, trans. Marcus Brainard (Cambridge: Cambridge University Press, 2006), 148.
[xviii] Strauss is referring here to the first of Locke's "disputations."

On Filmer
Session 2: January 8, 1958

Leo Strauss: You said one point[i] which I didn't quite understand because of the rush: what Hobbes said regarding Saul, and how it differs from what Filmer says.

Student: Well, as I understand Hobbes quoting scripture, he claimed that God was monarch over the Jews at this time . . . but actually the earthly monarch, insofar as the Jews could have any ruler, was God Himself. And he tells Samuel, when Samuel tells him [that the people have asked for a king],[ii] that they have not rejected Samuel but they have rejected Him, that is, God. Therefore, when Saul comes as a king, as I understand it, Hobbes believed this to be a separation: God no longer rules on earth as an earthly monarch and His kingdom is a heavenly kingdom.[iii]

LS: He says that the kingdom of God was terminated with the election of Saul. The kingdom of God does not exist from Saul until the Second Coming. And what does Filmer say?

Student: Filmer would claim that whether you consider God[1] or Samuel [as the earthly monarch], there is a continuity there and a direct line. My understanding is that Samuel, although called a judge, would actually be like a king because he ruled by God's donation of power. And formally Saul was a king and succeeded Samuel, but the tradition of divine right is not broken, no matter what sort of a ruler the Jews have.

LS: Of course he will have great difficulties in proving that Samuel was a king . . . But that is only a minor point. There was one point where I had difficulties. When you stated the position opposed by Filmer, you called that doctrine the natural right doctrine. Is this Filmer's description of that doctrine?

Student: Well, as I understood it he refers to the natural liberty and equality. I thought it was the natural rights idea.

LS: You are a historian, and therefore this question is properly addressed to you. I am not aware of the fact, but I may have overlooked it, that Filmer ever speaks of natural rights. At any rate, he would speak extremely rarely of it. And it is quite interesting that when we read it today, this expression "natural rights doctrine" comes so easily to our lips, and not so in Filmer. You see, Filmer wrote very early, 1640s, and at that time natural rights doctrines were not so famous under this name. This came in the latter part of the seventeenth century and in the eighteenth century. That would just be an interesting example of how this terminology has changed. I don't recall his speaking of natural rights, although he speaks of natural law and of natural liberty and equality. But I don't recall that he speaks as a matter of course of natural rights. There may be one or two mentions which I don't remember, but certainly not in this way. He doesn't call it, I believe, a natural rights doctrine. Now let us turn to the subject.

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[i] Strauss responds to a student's paper, read at the beginning of the session. The reading was not recorded.
[ii] In the original transcript: ellipses with the notation "(indistinct)."
[iii] Hobbes, *Leviathan*, chaps. 12, 35, 40, referring to 1 Samuel 8:4-7.

We must of course always keep in mind that this writing of Filmer, together with other writings of Filmer, which are not printed in this edition but which have been reprinted, most of them, in *Patriarcha and Other Political Works of Sir Robert Filmer*, edited by Peter Laslett, Blackwell's Political Texts.[iv] Here you get a better edition of the *Patriarcha* and you get in addition some other writing of Filmer, for those who are interested. Filmer is of importance to us only because Locke directed his *Treatise of Government* against him. Before we can turn to Filmer's own doctrine, we must see what is the character of the thesis which he attacked. How does he himself describe that thesis? Page 251: "'Mankind is naturally endowed and born with freedom from all subjection, and at liberty to choose what form of government it please, and that the power which any one man hath over others was at first bestowed according to the discretion of the multitude.'"[v]

You see there is no reference, no explicit reference at any rate, to natural right. The government is freely established by the multitude, and therefore the multitude is also free to withdraw the power which it has given to the government. Why does Filmer emphasize the fact that this is a doctrine of school divinity?

Student: Well, I believe that Thomas Aquinas had quite a bit to do with this idea. I don't know about the later scholastics, but Filmer claimed they were concerned to advance papal power over the power of the secular monarch.

LS: What is the relevance of[2] this remark?

Student: Well, occasionally in the Middle Ages, and even somewhat later, there had been disputes between the secular and ecclesiastical arms of the government. England at one time was under interdict, at the time of Henry and John, for coming into trouble with the papacy over certain regulations of the church. If the pope had some other power he could turn to besides the kings, the people were probably more devoted to religion than the average monarch and they would generally obey the pope.

LS: What I meant is this. Why does Filmer emphasize this point: that this doctrine, this wicked doctrine, stems from school divinity?

Student: Well, England had broken off from the church[vi] at that time and any attachment to the doctrine of the scholastics . . .

LS: In other words, he appeals to the anti-Catholic prejudice. That is important. But what is Locke going to do, if he will take up again, as it seems, a papist doctrine? Do you see that this creates some difficulty for Locke? If he attacks Filmer, he takes the side of the papists. How will Locke protect himself? How can he protect himself against this severe charge at a time when the fight between Catholicism and Protestantism was so important in England?

Student: Well, he often cites "the judicious Hooker," who was one of the leading divines of the Anglican Church.

[iv] *Patriarcha and Other Political Works by Sir Robert Filmer*, ed. Peter Laslett (Oxford: Blackwell's Political Texts, 1949).

[v] *Patriarcha*, 251. Here and subsequently, page references to this work are to the Hafner edition of the *Two Treatises*.

[vi] That is, the Catholic Church.

LS: So Locke is able to play that game, too. In other words, he says an Anglican divine and not a school divine, as mentioned here. Now to understand this doctrine—but this doctrine as stated here, regardless of where we can find the precise origin, and the thesis attacked by Filmer is clearly underlying the Declaration of Independence, with certain important modifications. For example, when you read this, as you will have seen, there is of course no reference here in the statement as Filmer makes it to the individual. That is quite interesting.[3] You see: "Mankind is naturally endowed . . . discretion of the multitude." There is no emphasis on [the] individual, whereas in the Declaration, of course, "all men are created equal," which means each man is created equal with the other. Now:

"That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government."[vii]

The question which I'm driving at is this: Is this Declaration of Independence a democratic document? Well, you would have to know what democracy is, of course. Now what is democracy? Well, shall I suggest a very famous man's statement, now discredited by the authorities? "Government of the people, for the people, by the people."[viii] Government *for* the people was the view of almost everyone. That you can have together with absolute monarchy or whatever you want. Government *of* the people is a more theoretical thesis: that this government for the people has its root, its original root, in the people, so that even an absolute monarchy is originally established by the multitude. But you can have government of and for the people without having government *by* the people; for example, if you have government by[4] hereditary nobility or by a hereditary and absolute monarch. The specific democratic thesis is, then—and Lincoln hits it absolutely on the head by saying "government of the people, for the people, and *by* the people."[ix] That is the distinctive difference between democracy and the nondemocratic regime. Now if that is so, what is the position taken by the Declaration of Independence? I read this passage to you again: "That whenever any form of government becomes destructive to these ends, it is the right of the people to alter to these ends, it is the right of the people to alter or to abolish it."[x]

The reference to "any form of government" means that there are many forms of government,[5] not only democracy. It is perfectly compatible with the position taken by the Declaration of Independence that the government may be monarchic or aristocratic, of course. The whole argument doesn't make sense if the British monarchy is not in itself a legitimate order. Otherwise, it would have been extremely simple to say the mere fact that the British government, British polity, is monarchic and has a House of Lords makes it illegitimate. That would be the strictest democratic argument. But the Declaration of Independence is not democratic. You can say it contains certain democratic elements, but not more. It is as democratic [as], and not more democratic than, the position attacked by Filmer here: that the government is of the people and for the people, meaning that it has originally been established by the people, but it is not necessarily government by the people. I was surprised to observe, in talking to a number of advanced men, advanced in knowledge, that this is not

[vii] The text of the *Declaration* reads "a new government."
[viii] A misquotation of Lincoln's phrase from The Gettysburg Address, "of the people, by the people, for the people."
[ix] See previous note.
[x] This sentence should read: "That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it."

generally admitted. It seems to be obvious. I believe certain people read into the Declaration of Independence other opinions which Jefferson expressed elsewhere. The opinions of Jefferson and even the state papers signed by him are something entirely different from this state paper signed by so many other people, where he did not speak as Thomas Jefferson. The position [then] is[6] this. There is no question that the government must be democratic. Only the government must originally have been established at first, as he says, according to the discretion of the multitude.

The position is then that men are originally at liberty to choose what form of government they please. And that means that the multitude may establish any form of government it pleases. How is this thesis justified? Filmer quotes a passage from Cardinal Bellarmine:[xi7]

"Secular or civil power is instituted by men; it is in the people, unless they bestow it on a prince. This power is immediately in the whole multitude, as in the subject of it; for this power is by[xii] the divine law, but the divine law hath given this power to no particular man. If the positive law be taken away, there is left no reason why amongst the[xiii] multitude—who are equal—one rather than another should bear rule over the rest."[xiv]

Now that is the crucial sentence. Here it is indeed implied: All men are by nature equal. That is the meaning of the phrase, "If the positive law be taken away." The positive law of course establishes inequality, inequality of the governing as distinguished from the governed, the rich as distinguished from the poor, the nobles as distinguished from the commoners,[8] [whatever] the differences may be. All men are by nature equal. That is, of course, correctly understood by Filmer, that this is the chief issue. All inequality is conventional, positive. And since this is so, since all are equal, no one has by nature the right to rule anyone else, and therefore all right of men to rule other men must be derivative from positive law, from some positive, in principle arbitrary, establishment. Therefore everything turns on this fundamental premise, i.e., all men are by nature equal. Now what does this mean, "all men are by nature equal"? We shall see later on that Locke will take this up. We have studied last quarter Aristotle. What does he say to this basic premise? They are not. What does Thomas Aquinas say about this subject? Are all men by nature equal? Would all men be equal, even if Adam had not sinned, to state it more radically?

Student: No.

LS: Thomas is in this respect in agreement with the Aristotelian doctrine. It would require an historical study to see why some adherents of Thomas, for example Cardinal Bellarmine, accept this equality thesis. That is a somewhat different tradition, but we don't have to go into that. According to Filmer, no proof is offered by his opponents as to why all men are by nature equal. Did you find any arguments here supporting the thesis that all men are by nature equal?

Student: In Thomas?

LS: In the quotation of his opponent which Filmer gives.

[xi] Robert Bellarmine (1542-1621) was a prominent Jesuit theologian of the Counter-Reformation.
[xii] In the original: "for this power is in the divine law."
[xiii] In the original: "a multitude."
[xiv] *Patriarcha*, 253-54.

Student: Well, the only argument which they seem to use is that since there is no proof from scripture according to them, or from anywhere that any specific allocation of power was made to one man or to any group of men . . .

LS: But what about these men, these opponents of Filmer? Let us call them, for convenience's sake, the school divines, although that is too narrow. Does Filmer refer to any argument adduced by these men to prove that all men are by nature equal? Well, common sense speaks against it: men are very different, and not only by virtue of law. There must be some arguments. No, Filmer says somewhere explicitly that they do not prove it, that they do not use any arguments. They somehow take it for granted. That does not mean that there is not an argument to be found, but it is not so easily available. Now how does Filmer criticize Bellarmine's thesis? Perhaps we read these three points on page 254.

Reader:
First, He saith that by the law of God power is immediately in the people; hereby he makes God to be the immediate author of a democratical estate; for a democracy is nothing else but the power of the multitude. If this be true, not only aristocracies but all monarchies are altogether unlawful, as being ordained—as he thinks—by men, whereas God himself hath chosen a democracy.[xv]

LS: What about this argument? In other words, God has given the power originally to the multitude. That means God has established a democracy. Why then can men deviate from that divinely ordained democracy by transforming it into a kingship or aristocracy, as they can do rightfully according to Cardinal Bellarmine? How would Bellarmine meet that point?

Student: Well, the people are given the power but there is no law that they cannot entrust this power. In the form of government, the exercise of power is accidental. It may be inconvenient. They can grant it conditionally.

LS: But still, is there not a certain difficulty here? Surely Bellarmine would say that democracy is inconvenient. But why then have a democracy originally divinely established?

Student: Well, if power is granted to the people, is power necessarily identical with government? Democracy is a form of government, as I understand it. Civil power being immediately in the people: Is that a democracy?

LS: In other words, you would say this original democracy, this so-called democracy, is not a democracy; it is a kind of pregovernmental state. Yes, that I believe he would answer. Now what is the second argument?

Reader:
Secondly, He holds that, although a democracy be the ordinance of God, yet the people have no power to use the power which God hath given them, but only power to make[xvi] away their power, whereby it followeth that there can be no democratical government, because he saith the people must give their power to one man, or to some few; which maketh either a regal or aristocratical estate, which the multitude is tied to do, even by the same law of nature which

[xv] *Patriarcha*, 254.
[xvi] In the original: "give"

originally gave them the power. And why then doth he say the multitude may change the kingdom into a democracy?[xvii]

LS: I think to answer that question one would have to look up Bellarmine's text and see, first of all, whether Filmer quotes him correctly; and secondly, if he quotes him correctly, whether that is not taking advantage of a certain loose expression. As far as I remember, Bellarmine was in favor of a mixed regime. I know the quotation from Hobbes's *Leviathan*, which is perhaps not the best source for the interpretation of Cardinal Bellarmine, where he says that the right kind of order is a mixed order, a mixture of monarchy, aristocracy, and democracy.[xviii]

Student: The quotation from Bellarmine is not accurate, although I don't remember the exact point.

LS: Is there any important question raised by this criticism of Cardinal Bellarmine? Then Filmer turns to the criticism of Bellarmine's principle, which is that all men are by nature equal. The argument that he uses here on the next page is based on the Bible, as you can see, and exclusively on the Bible. The patriarchs "were endowed with kingly power, their deeds do testify," says Cardinal Bellarmine.[xix] This leads us into a long question. What would follow from that? If the patriarchs were endowed with kingly power, what authority would this have for political reasoning—I mean, accepting the authority of the Bible? We are no longer accustomed to arguments, political arguments, based on the Bible, but in order to understand the issue we must consider that. Both sides, Cardinal Bellarmine and Filmer, regard the biblical arguments as valid arguments. Now if it is true that the patriarchs were endowed with kingly power, what follows from that regarding political power in general?

Student: Well, since religion was such a crucial question, this would seem to stamp God's approval on kingly power in general . . .

LS: But still, were these arguments really regarded as decisive in former times? By Filmer, almost certainly, but what about scholastic disputations? What about it?

Student: Well, it depends. If it's an explicit proof—very often they would quote scripture simply to show, to bolster the argument and not to give a convincing proof. It would depend on the way that they were using it.

LS: Would there not be a crucial difference if the patriarchs actually had this kind of patriarchic, monarchical power of which Filmer speaks, or whether there is an explicit biblical command to this effect? Does this not make an enormous difference?

Student: Surely.

LS: So you see that the mere biblical practice does not yet establish anything, and Filmer assumes that. This only in passing.

[xvii] *Patriarcha*, 254.
[xviii] *Leviathan*, chap. 42. "Of five Books he hath written of this subject, the first containeth three Questions: One, Which is simply the best government, *Monarchy*, *Aristocracy*, or *Democracy*; and concludeth for neither, but for a government mixt of all three."
[xix] *Patriarcha*, 255.

Student: Wouldn't this also depend on the status of the natural law in contrast with the divine law . . .

LS: But what is the official doctrine regarding that relation between the natural law and the divine law?

Student: It would be derivative.

LS: Is this correct? Is the natural law derivative from the divine law, as has been suggested in your answer?

Student: . . . the divine law would include the natural law; the natural law would be [that part] as known by men, by their reason.

LS: But would it not be simpler to say this: that the divine law *qua* divine law is distinguished from the natural law?

Student: Yes.

LS: And that the natural law is the law knowable by reason. The divine law as divine law is knowable by revelation, and there is no relation of dependence. You mistake this for the eternal law, which is an entirely different story, from which all laws are derivative according to the Thomistic teaching. As for your question, as far as it applies to Filmer, I believe there is no independent argument based on the natural law. He refers to the natural law more than once, but his chief argument is based on the Bible, on the divine law. Filmer's main argument, if I understand him correctly, is this. These men say men are by nature equal and therefore they are by nature free. How does this follow: if men are by nature equal, then men are by nature free?

Student: You would have to equate slavery to the power of one man over another, freedom being freedom from power of one man over another . . .

LS: If all men are by nature equal, no man can be by nature the lord of any other man. And that means all men are by nature free. This is the thesis which he attacks. And Filmer's main answer is: Men were never free; men were always subject from the very beginning. Proof: the Bible. All men except Adam were subject to Adam, and by divine appointment this subjection to Adam or the heirs from Adam goes on up to the present time. Men never were free; men were always subject to Adam or the heirs from Adam. Of course, Adam and the heirs themselves were free, naturally: being absolute monarchs, they were free, meaning free of any human direction. That, therefore, is the crux of Filmer's thesis. The natural law argument which he uses is different from the merely biblical argument in this. The first power which men have over men, up to the present day to some extent, is paternal power. And paternal power necessarily becomes kingly power. There is no essential difference between paternal and kingly power, and so much so that the kingly power, which originally is the complete paternal power, then supersedes the paternal power in the way that the king is now more the ruler of the children of anyone than the father of these people themselves. Generally stated, since the paternal power was also called the economical power—which doesn't mean of course what it means now, but means the power of the father of the household—there is no essential difference between kingly power and economical power. And at this point he specifically takes the position attacked by Aristotle at the beginning of the *Politics*, the

position of Plato, or at least apparently of Plato. Do you remember, on the first page of the *Politics,* Aristotle makes this remark that the people who say that the power of the father and political power are the same are wrong?[xx] That was the view expressed by Plato, and here Filmer in this point sides with Plato against Aristotle. Then, however, a great difficulty arises. What happens if the royal family becomes extinct? Let us assume that Henry VIII is the heir from Adam as far as people living on the British Isles are concerned, and his line becomes extinct. What will happen?

Student: This has happened many times, but I don't think there was ever a time when there wasn't some sort of an heir connected somehow to the family, that some pretense can't be made. Or as Filmer says, no matter who has the power—if it is a usurper, or if the true heir can't be found, or it is a commonwealth—it's still not, perhaps, kingly power but paternal power and supreme power.

LS: But if the whole thing is established by divine right with the enormous sacredness which Filmer attaches to that, is it not of crucial importance that you are sure that this is the right heir? What about a usurper, according to Filmer?

Student: Well, that's unfortunate, but he still has the power. The power comes with the office. Having a true heir is the best position, of course, but the power is in the office of king itself.

LS: But is it not a very dangerous switch of the argument?

Student: Yes, it is.

LS: So that, in other words, is the most massive weakness. He teaches [it] explicitly, and you can see that on page 259, bottom.

Reader:
In kingdoms or commonwealths in the world, whether the prince be the supreme father of the people or but the true heir of such a father, or whether he come to the crown by usurpation, or by election of the nobles or of the people, or by any other way whatsoever, or whether some few or a multitude govern the commonwealth, yet still the authority that is in any one, or in many, or in all these, is the only right and natural authority of a supreme father.[xxi]

LS: We can leave it at that. That is absolutely fatal to his point. He divorces completely, at the end, rightful government from being the right heir to Adam. Therefore, why do we need that very dubious hypothesis?

There is another point which we must emphasize with a view to the better understanding of Locke. On the next page, at the beginning of chapter 2 (page 260): "By conferring these proofs and reasons, drawn from the authority of the Scripture, it appears little less than a paradox which Bellarmine and others affirm of the freedom of the multitude, to choose what

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[xx] See Aristotle, *The Politics*, translated by Carnes Lord (Chicago: University of Chicago Press, 1985), 1252a7-16: "Those who suppose that the same person is expert in political (rule), kingly (rule), managing the household and being a master (of slaves) do not argue rightly." Cf. Plato, *Statesman* 258e-259d.
[xxi] *Patriarcha*, 259-60.

rulers they please."[xxii] You see, the reasons and proofs are drawn from the authority of the Scripture, in spite of the occasional reference, as [in] Filmer, to the law of nature. The argument is chiefly and decisively meant to be scriptural. There is a parallel to that in one of his other writings, which I can read to you.

"There never was any such thing as an independent multitude who at first had a natural right to community. This is but a fiction or fancy of too many in these days who believe themselves in running after the opinions of philosophers and poets to find out such an origin of government as might promise them some title to liberty, to the great scandal of Christianity and bringing in of atheism—since a natural freedom of mankind cannot be supposed without the denial of the creation of Adam."[xxiii]

If Adam was created, and hence created in subjection, men were always in subjection. I'm not now concerned with the validity of the argument; I only want to emphasize that in Filmer's own point of view the mainstay of his position is the biblical teaching.

Let us turn then to Locke, for reasons which will appear to you later. In the passage on page 4 we read: "For I should not have writ against Sir Robert, or taken the pains to show his mistakes, inconsistencies, and want of what he so much boasts of and pretends wholly to build on Scripture-proofs, were there not men amongst us who, by crying up his books and espousing his doctrines,[xxiv] save me from the reproach of writing against a dead adversary."[xxv]

So we must keep in mind before we turn to Locke that Locke at least presents the issue in these terms. Here is a political doctrine which claims to have on its side the authority of the Bible, and in fact it is based wholly on the authority of the Bible; and therefore it is crucial for Locke to answer Filmer with a scriptural argument. The *First Treatise* is absolutely essential for that, because he is confronted with the assertion that no idea of natural equality or liberty is compatible with the biblical doctrine.

There is one point which Filmer makes of which you disposed very elegantly, but which is still, I believe, not so simple. This is a point of really fundamental importance. That is on page 267:

"But let us condescend a while to the opinion of Bellarmine and Suarez,[xxvi] and all those who place supreme power in the whole people, and ask them if their meaning be that there is but one and the same power in all the people of the world, so that no power can be granted except all the men upon the earth meet and agree to choose a governor.

"An answer is here given by Suarez, that it is scarce possible nor yet expedient that all men in the world should be gathered together into one community. It is likelier that either never or for a very short time that this power was in this manner in the whole multitude of men

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[xxii] *Patriarcha*, 260.
[xxiii] Robert Filmer, *Observations on Aristotles Politiques*, preface. This text is currently available in Robert Filmer, *Patriarcha and Other Writings*, ed. Jóhann. P. Sommerville (Cambridge: Cambridge University Press, 1991). For the quoted passage, see pages 236-37 of this edition.
[xxiv] In original: "doctrine."
[xxv] *First Treatise*, preface, 4.
[xxvi] Francisco Suárez (1548-1617) was a prominent Jesuit Counter-Reformation theologian.

collected, but a little after the creation men began to be divided into several commonwealths, and this distinct power was in each of them."[xxvii]

Now first, before we go on: What is the issue?

Student: Well, if the individual states existing in ancient times or at the present time had the right to confer sovereignty on any individual ruler, as opposed to the whole people of all the world.

LS: And more precisely, in this argument, as stated at the beginning, the expression occurs, "the whole multitude." What is that whole multitude? If the whole multitude is the human race, that we understand; but if it is a part of the human race, as is actually meant in this doctrine, what is the cause making this multitude a whole? Do you see this difficulty? With what right does this part of mankind close itself off from the rest of mankind and say, "We constitute a whole multitude"? Let us first see how Filmer answers that in the sequel.

"This answer of 'scarce possible nor yet expedient' —it is likelier begets a new doubt how this distinct power comes to each particular community when God gave it to the whole multitude only, and not to any particular assembly of men. Can they show or prove that ever the whole multitude met and divided this power which God gave them in gross by breaking into parcels and by appointing a distinct power to each several commonwealth? Without such a compact I cannot see—according to their own principles—how there can be any election of a magistrate by any commonwealth, but by a mere usurpation upon the privilege of the whole world. If any think that particular multitudes at their own discretion had power to divide themselves into several commonwealths, those that think so have neither reason nor proof for so thinking, and thereby a gap is opened for every petty factious multitude to raise a new commonwealth, and to make more commonweals than there be families in the world."[xxviii]

That is the first part of his answer. Do you see the point which Filmer makes? This doctrine is based on a natural right of secession which, if it is admitted, legitimates every secession in every society. You referred to that argument?

Student: Yes, I did it by just counterbalancing it against Filmer's argument that there is Adam and [his] one true heir. Locke brings up the point that if this is the case, why are there so many monarchs in the world today, and is that legitimate? In other words, there are so many princes, just as there are so many states.

LS: [9]You anticipated Locke's argument, but still we must see whether Locke's rebuttal has any validity. What do you say to that? Locke says that this late[xxix] scholastic doctrine implies the admission of a natural right of secession, because by nature the only whole which you can allow could be the whole human race. If there is a natural right of secession, that is fatal to every civil society, because there can always be a part which claims that right. How could this argument be met? How could the truth to which Suárez referred by speaking of "scarce possible nor yet expedient" be brought into harmony with the basic assertion?

[xxvii] *Patriarcha*, 267.
[xxviii] *Patriarcha*, 267.
[xxix] "Late" is noted by hand in the margin of the transcript.

Student: Well, it was scarcely possible or expedient, but one could say that the whole multitude by agreement at one time agreed to divide and to invest power separately.

LS: But here Filmer comes in and says there is no record whatever of such a peaceful compact by which the whole multitude divided into parts.

Student: The division of the people at the Tower of Babel might provide some basis for this argument.

LS: Let me see how this would fit into the argument. In other words, here you would say a divinely ordered dispersal takes the place of that compact.

Student: You might say on the basis of what is generally called the contract theory that this compact wasn't made by all the people of the world at one time, but that people in various areas got together and made this compact, and just because everyone couldn't get to the same area, the compact was actually made at separate times and in separate places.

LS: In other words, there took place a dispersal in one way or the other because of the multiplication of the human race, and then it was simply impossible to have one universal government. Therefore, there was in fact a separation; the various parts of the human race were separated and there was no difficulty then in these separated states, e.g., the inhabitants of the American continent as distinguished from Europe and so on, in setting up independent governments. But still, is this the whole story? Is there not a difficulty which remains? After all, if you have a state, e.g., Luxembourg, which is a separate sovereign state as distinguished from France, Germany, and so on, and a part of Luxembourg would want to establish an independent state, what would be the situation? And how would these men argue? In a way, I suppose there would be no difficulty; many people today would admit as a matter of course a right of secession, national self-determination. But how would these older men have argued?

Student: I don't know whether they would have to say that the right of secession is natural.

LS: In other words, the very fact that this multitude can be governed by a single government is an argument against this secession.

Student: The fact that it *can* be?

LS: That a certain multitude *is* governed by a certain government proves that there is no necessity for this secession *merely* in order to have government. Then there would have to be a very strong reason, based on the fact of oppression and so on, which would justify it. So the argument can be met.[10]

Student: Would that not then be open to anyone arguing for absorption, that the state ought to absorb and rule over its neighbor if it happens to be smaller?

LS: Still, I think that argument would also cut the other way and meet the argument just stated: that these smaller people prove to be capable to live under ordered government, in spite of its relative smallness. With what right do others interfere?

Then he makes another point in the immediate sequel which is of some interest. But I think we can drop that and restate it, because it is very clear, the argument being that no

government of which we know was ever established by a compact. The attacked doctrine presupposes that the people uniting and making an agreement of some sort established the government. There is no proof whatever that any government originated in such a compact. Locke will have to say something on this subject, as we will see, but let us assume that this is correct, that there is no evidence for any such original compact. How would this be answered?

Student: Well, the rights of the people were violated[xxx] at some particular time and have been since.

LS: But you presuppose something: the rights of the people. What does it mean?

Student: Well, the natural right of the people to govern; the freedom and equality of every man, which have been slighted by tyrants.

LS: All right, let us assume that. But this doctrine which you stated presupposes that at a certain moment government was established—the form of government as well as[11] the government—by a compact. To which argument Filmer replies: "There never was any government which was established by compact."

Student: Well, what I was getting at was that there wasn't any government at all. A man might come along and take over, but he . . . a tyrant might come along and assume power over a people without any real compact at all; there might be a tacit compact.

LS: We will come to that. In other words, the common answer was this. We have no record of explicit compacts, quite naturally, because these things go back to preliterary times. But there was and must have been a tacit compact. That was, or is, one way of meeting the point. But how does Filmer reply to that? He does that on page 268 . . . If you have recourse to a tacit compact, then you can justify every tyranny. What is the proof of a tacit compact? The acceptance of the government in being. But that applies to every tyranny. What he means is the ambiguity underlying the present sociological notion of "consensus." If the explicit consent showing itself, for example, in free elections is replaced by the consensus, this consensus must exist even under the most terrible tyranny if it is not in fact overthrown. So the tacit compact is not sufficient. How could this be met by the people who favor the social contract?

Student: Well [. . .] the people who felt that the rule to which they were subjected was illegitimate and the people who did not feel that the rule was illegitimate . . .

LS: But why is this thought, that these tyrannical governments are illegitimate, expressed in the form that this government cannot rest on the social compact?

Student: They obey against their will.

LS: But how do you know? No one dares to say it. Well, there is a presumption made, that as reasonable beings they cannot possibly obey. They obey, compelled either by force or by deception, as they cannot possibly obey from their own free will. That is behind this[12]

[xxx] In the transcript: "violated (?)"

[contractarian argument].[xxxi] In other words, all legitimate governments must be based on the implicit consent of people as sensible people, whereas in the present sociological consensus concept, this qualification of sensible people is out. That the majority of the people can be presumed to wish this form of government and this government in being, because it fundamentally fulfills the function which reasonable men expect of the government—that is expressed by the thought of tacit consent.

Student: On page 259, there was in Filmer an idea that the government is responsible to God and that God can act through the people.

LS: In subverting a tyrannical government? Which is that?

Student: "If it please God, for the correction of the prince or punishment of the people, to suffer princes to be removed, and others to be placed in their rooms, either by the factions of the nobility or rebellion of the people, in all such cases the judgment of God, who hath power to give and to take away kingdoms, is most just; yet the ministry of men who execute God's judgments without commission is sinful and damnable. God doth but use and turn men's unrighteous acts to the performance of His righteous decrees."[xxxii]

LS: Well, what does Filmer assert here? Every rebellion is illegitimate, even against a Nero: "unrighteous acts!" And yet[13] Nero deserved that, but that does not make it a right action of the people. The people usurp a right which they never had. In other words, the people in their way are as unjust as Nero. That is the point which he makes here.

Student: But yet they, in doing the action, although the action may be unjust because they didn't have the official right to do it, might be carrying out the will of God . . .

LS: Yes, in the wider sense, which even a murder meets in one sense, since it would not have been possible without God having given the murderer the power to murder. One must make a distinction [here], which former [theologians] have always made,[14] between two meanings of the will of God: in a way, what God permits, He wills, but not in the same way in which He wills what He commands men to do. It would free a man of a wholly unrighteous act. In more simple terms, God can punish Nero in *n* different ways—after death and so on. That people who are oppressed by him and hate him take revenge on him is in itself a new sin. From God's point of view, it deserves punishment, [xxxiii] but it does not yet make the action of the people right. There is of course never a trace of an admission on Filmer's part of a right to rebellion or to resistance.

Student: No, but still [Filmer says]: "if it please God for the correction of the prince or the punishment of the people to suffer princes to be removed and others to be placed in their rooms, either by the factions of the nobility or rebellion of the people." It seems to me that this is vulnerable. On the one hand, the argument has been given that the people do not have the right to leave the state. In case it has been done, one can give the argument that it was actually the will of God that . . .

[xxxi] In the original transcript, "government"; a handwritten note in the margin proposes "doctrine."
[xxxii] *Patriarcha*, 259.
[xxxiii] Namely, Nero's conduct.

LS: That has difficulties of its own, I grant you that, but that is a difficulty which is implied in every theology and not in Filmer in particular. I mean, no action of man, however criminal, is possible without God in a way permitting it. God has the power to prevent it. One must somehow make a distinction between compliance with the will of God as expressed in His commands to men, and that will of God which shows itself in the mysterious providential ruling. Some such distinction is presupposed here, as by all theologians. That is not a specific Filmerian difficulty. Then you have to make detailed theological studies, but they are improperly applied to poor Filmer, who in this respect simply takes them as generally stated.

Student: He says that "men who execute God's judgments without commission" are "sinful and damnable." It seems to me that almost any successful rebellion can be justified not only as an act of God for punishing a tyrant, but just in itself. In other words, a fanatic comes along and says he has received the word from God and overthrows the prince; there is no one to dispute this and say he has not got God's permission.

LS: Oh, he would say this: that no claim of any fanatic can possibly be proved true if it contradicts the word of God, the Bible itself. And of course he would get into some trouble because of the Old Testament, where there were cases where prophets stood up against the kings, passages to which Filmer in his prudence doesn't even allude, e.g., Elijah and such stories.[xxxiv] That is another matter. Filmer's position, as he expresses it, is simply this: the Bible forbids resistance to the king or prince under all conditions, at least active resistance. Passive resistance, which means refusal to obey manifestly immoral demands, is another matter. But active resistance is forbidden under all circumstances. So, if a man, allegedly God-inspired, comes and preaches active resistance, we know he is an impostor. That is simple.

Student: In other words, there can be no commission for revenge under any case.

LS: No. But all divine right kings have said the same thing, and that is not a peculiarity of Filmer. A more important point, important not only for Filmer, is what he said on page 268. But before we turn to that, we must not forget that the implication of this social contract doctrine is this. There is first the assembled multitude, which establishes the government, but how does this assembled multitude go about it? Answer: Like any assembly as we know it, by majority vote. That may also be unanimity, but that is not necessary; the majority is sufficient for the establishment. The majority want Mr. X to become the originator of the dynasty, and the others Mr. Y; the majority have it. That is easy. And here is where Filmer comes in. Let us read that paragraph.

Reader:
As to the acts of the major part of the multitude, it is true that by politic human constitutions it is oft ordained that the voices of the most shall overrule the rest; and such ordinances bind, because where men are assembled by a human power, that power that doth assemble them can also limit and direct the manner of the execution of that power, and by such derivative power, made known by law or custom, either the greater part, or two thirds, or three parts of five, or the like, have power to oversway the liberty of their opposites. But in assemblies that take their authority from the law of nature, it cannot be so; for what freedom or liberty is due

[xxxiv] 1 Kings 17-21.

to any man by the law of nature no inferior power can alter, limit or diminish; no one man nor a multitude can give away the natural right of another.[xxxv]

LS: Here we have a reference to the natural right.

Reader:
The law of nature is unchangeable, and howsoever one man may hinder another in the use or exercise of his natural right, yet thereby no man loseth the right of itself; for the right and the use of the right may be distinguished, as right and possession are oft distinct. Therefore, unless it can be proved by the law of nature that the major or some other part have power to overrule the rest of the multitude, it must follow that the acts of multitudes not entire are not binding to all but only to such as consent unto them.[xxxvi]

LS: Now what does it mean in simple language? What is the argument of Filmer here?

Student: His argument is that the people who don't agree to a majority decision aren't bound by it.

LS: The majority principle, in other words, is entirely a positive principle, not a natural law principle. The only way in which the majority principle could become binding would be by a previous unanimous decision, a decision to establish the majority principle. That is what he suggests. That is, incidentally, the way in which Rousseau states the problem. But there is of course an alternative way, to which he alludes here, i.e., that the majority principle is itself a natural law principle. Do you know of any people who asserted that, that the majority principle is a principle of natural law and not merely one of positive law?

Student: Well, Locke in the *Second Treatise* says it is reasonable; the body of the people must [decide] in one way or another, and therefore a majority can decide.

LS: It amounts in fact to the assertion that the majority principle is a natural law principle. The same was done by Hobbes. I suggest that you try to figure this out. Is there any alternative, given the premise that all members of the assembly are equal, except the majority? Try it with a minority: How would it work out? We are an assembly, and the minority will have it. What would happen? I suppose everyone would vote for the opposite. Let us take a simple proposal. What would it be? "All examinations shall be abolished." The minority will be binding. How would you vote? You have the greatest interest that the minority will be in favor of that; therefore, you will vote against it to make sure. In other words, it is only a much more complicated way of getting what you get in a straightforward way by the majority principle. Or what is the difference?

Student: I think it is possible to suggest another alternative to majority rule, that is, the suggestion of a veto. Whether it is Calhoun's idea of the concurrent majority or something else, certain people have the right to block action.[xxxvii]

[xxxv] *Patriarcha*, 268.
[xxxvi] *Patriarcha*, 268.
[xxxvii] John C. Calhoun (1782-1850), a prominent American political leader from South Carolina during the antebellum era. Calhoun formulated the principle of the concurrent majority, a doctrine that held that all major elements of society should in effect possess a veto on governmental decision, as the only reliable means of preventing majority tyranny.

LS: But then the question arises: Can you then have any government, any decision? And if there are very good reasons for assuming that people cannot live together peacefully if decisions are not being made, the simple veto must be excluded. You could say the lot, but the lot of course would bring about the same difficulty. And then you can say, still better, you have it by the majority vote after deliberation, [rather] than by the completely blind wish of the lot. So in other words, there are some arguments underlying the majority principle. But one must never forget, the root of the problem is not this, because I believe people would never have questioned the majority principle as applied among equals. As Aristotle indicates, the majority rules everywhere, meaning the majority of those entitled to vote. The question is whether all men are by nature equal, or whether all men of a given territory are citizens. These are the political questions. But the formal majority principle was never seriously questioned. People preferred the lot for other reasons. Take, for example, the official doctrine of Athenian democracy as stated by Aristotle. If you have a majority vote for public office, quite a few people do not have a ghost of a chance of ever being elected, because they could only be elected dogcatchers in any society. In order to give them as great a chance as anyone else, there is no other way of doing that but the lot. But that is not a very intelligent notion. The only reasonable way, once granted the equality of all members of the assembly, is really the majority. And that, I would say, is politically neutral, because the question first concerns the composition of the assembly or of the electorate, and so on. But[15] [when you no longer have] one-man rule, you must fall back on the majority principle, given the equality of all members of the commonwealth. You have some difficulty? Is there any point which you want to bring up?

Then Filmer gives a very long argument to prove that there is no scriptural proof for popular elections of kings. Those of you who know a bit of the Bible, what is the value of this argument?

Student: There might be one exception. After the division of the kingdom, the northern kingdom of Israel elected a leader, or some kind of assembly took place and one not anointed by a prophet emerged from the assembly, having been chosen by the assembly. Otherwise, I think he has a case. Saul and David were chosen by a prophet and the succession followed.

LS: Well, it was obviously the legal presumption that the throne would succeed to the father without any election. But granted, let us assume that the biblical facts are in favor, that in Israel and Judea there was hereditary monarchy and no election by the people of the king or of the dynasty. What is the value of this argument, even on the basis of the biblical position? Because the moment one questions the authority of the Bible, one goes out of the circle in which the whole discussion takes place.

Student: The[16] argument[17] [that] there was no election[18] means the principle of election was not present in the people.

LS: But I believe that the theologians could always have said this: that the case of the elected[xxxviii] people is the special case, and the principles of natural law cannot be established on this ground. In other words, referring to the distinction between divine law and positive law. The difficulty arises only in this way. If not, the presumption that God gave His elected people the best political order is not very strong. That, I think, was the issue as long as the political discussion took place on this basis. And therefore, for example, St. Thomas in the

[xxxviii] The transcriber notes that Strauss might have said “elective.”

Summa as well as Calvin in the *Institutes* take it for granted that the polity of the Old Testament was the best regime; the presumption being that God is not likely to have given an imperfect order to the elected people.[xxxix]

Student: Could the argument be brought forth also in connection with the contrast between the Old and the New Testament? I don't know exactly in what form you would make it, but one in which the Old Testament example would not be decisive.

LS: Well, that is a very simple principle, that only the moral law, and not the ceremonial law and judicial law, is valid for Christians. That was the principle. But surely, you can read that . . .

Student: I don't mean Thomas would make it; I mean as someone like Filmer might have made it . . .

LS: No. That it has in itself no legal validity was, I believe, granted by all Christian theologians. So in other words, there is no legal title to the Old Testament provision in these matters, i.e., judicial and ceremonial matters. In other words, as little as the biblical supper law applies automatically to Christians would these laws[19] regarding kingdoms and so on. But the question was this: Is not God likely to have given His elected people the best order? Of course, I remember enough from theology to give an answer to that. Perhaps the Jews were a particularly stiff-necked people. But it is interesting to see that neither Thomas nor Calvin used this way out. And therefore that was a relatively powerful argument. We must keep this in mind if we want to understand the prehistory of democracy. The acceptance by the Western world of democracy had to go through this fight, through this fight against the biblical precedents. There was to begin with a powerful opposition to that. Naturally, in the Christian tradition, especially in the Middle Ages, that [opposition] was considerably weakened, because [of] the passage in Samuel (1 Samuel 8), to which Filmer refers, where Samuel warns the Jewish people against kingship because of the terrible things the king will do—I don't know whether you remember that passage—how beastly he will treat his subjects. Now this was taken, if I remember well, by the Christian expositors as a warning against monarchy as such. I would have to look up certain things to be quite sure, but in the [. . .] for example, this view is expressed, whereas in the Jewish tradition the opposite view was taken. And this view [is], namely, that Samuel describes here the rights of the king—not "the king *will* do these terrible things," but "the king has a right to do these things," i.e., to take your sons for his servants and the other things which the prophet mentions there. And this view, this harsh interpretation, is the one which is of course accepted by Filmer and which was accepted by the royalists of the seventeenth century, whereas Milton, for example, the republican Milton, takes the opposite line.[xl]

There are only a few more passages to which I would briefly refer. There are certain arguments regarding democracy which are independent of these biblical arguments. Filmer, of course, is absolutely opposed to democracy. What are the main points? What are the main

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[xxxix] Thomas Aquinas, *Summa Theologica* I-II q. 105, art. 1; John Calvin, *Institutes of the Christian Religion*, 4. 20. 8.

[xl] John Milton (1608-1674), the famous English poet and political thinker. Milton was author of *The Tenure of Kings and Magistrates* (1649), the text to which Strauss is probably referring. He also wrote *The Ready and Easy Way to Establish a Free Commonwealth* (1660), an attempt to make the case for founding a republic rather than for restoring the monarchy in 1660.

points in Filmer's argument? That is, if we disregard such general words as "giddy multitude" and so on?

Student: Well, that it breeds corruption and civil war; it can't govern large territories; it leans toward private interests rather than concern for the commonwealth . . .

LS: In the first place, let us take this one point. There cannot be a democracy ruling a large territory. Now what was the status of this in Filmer's and Locke's time? Was there any evidence of a democracy in a large territory? None. And you know this lasts up to the *Federalist Papers*, where this is still discussed.[xli] Can there even be a republic, to say nothing of a democratic republic, in a country of considerable extent? That question disappears only around the middle of the nineteenth century. I think in Lincoln's famous statement of how much depends on the Civil War, where he says that will decide whether government of the people, for the people, by the people will not perish from the earth, [xlii] there is still a recollection of that, i.e., what an unusual thing it is that there is government of the people, for the people, by the people,[20] at least [in] large territories. Because Europe at that time was covered, of course, by monarchies: France was under Napoleon[xliii] and so on. The success of the American experiment was the first empirical proof that a republic larger than a city-state is possible. This was all the historical evidence. And he gives some arguments which are very impressive, if you think of what one could have known up to 1650 or so, namely, the slaughter of men under the Roman republic in the last hundred years, the period of the civil wars, was far greater than the slaughter of men under the worst Roman emperor. You know, where he rightly says that it was limited to very small groups, and then these mass proscriptions under Marius and Sulla,[xliv] as well as later on, have no parallel in that.[xlv] Here we must see that these arguments were, at the time that Filmer wrote, not weak arguments. The question is: Did Locke advocate democracy? Was this the issue between them? I believe we can show it was not, but we must see that.

There was one more point. On page 290, paragraph 8, he states:

"There can be no laws without a supreme power to command or make them. In all aristocracies the nobles are above the laws, and in all democracies the people. By the like reason, in a monarchy the king must of necessity be above the laws; there can be no sovereign majesty in him that is under them; that which giveth the very being to a king is the power to give laws; without this power he is but an equivocal king."[xlvi]

Do you recognize something in this statement?

[xli] Strauss is referring to the well-known argument in *Federalist*, no. 10 that not only is a large republic possible but that largeness can solve the otherwise intractable problem of majority tyranny in republics.

[xlii] A misquotation of Lincoln's statement: "government of the people, by the people, for the people, shall not perish from the earth."

[xliii] Strauss is referring to Napoleon III, who ruled France in 1863, the year of the Gettysburg Address.

[xliv] Gaius Marius (ca. 157-86 BCE) was a Roman soldier and politician who held the office of consul seven times in his career. A leader of the *Populares*, he supported the popular assemblies at the expense of the Senate, which was defended by the *Optimates*, who were themselves led by Lucius Cornelius Sulla (ca. 138-78 BCE).

[xlv] *Patriarcha*, 276-77.

[xlvi] *Patriarcha*, 290.

Student: It seems Hobbes himself would . . .

LS: Yes, but that is even independent of—although Hobbes plays a great role in that. But how is that doctrine called?

Student: Sovereignty.

LS: And Hobbes was [not] the first to develop this, but it was of course older. Filmer knew Hobbes, by the way; he knew his writings. There is a treatise of his directly explicit on that point.[xlvii] So that is directed against the traditional populist notion, maybe evil notion from his standpoint, that there is a law which is above all government which binds the king and even perhaps bound them, too, or it can only be altered if both king and parliament join to alter it. There is a rule of law proper. That was denied by the theory of sovereignty. That there must be in every society one, [be it] king or assembly, which can alter or abolish any law as it sees fit, [that] there is no law which cannot be altered or abolished—that is the simple meaning of the doctrine of sovereignty. And that is of course implied in all notions of democracy as we understand it today. Democracy means, then, the sovereignty of the people: the people are free in principle to alter or abolish any law they have given. In the earlier camp, even in Bodin, there were still some qualifications. A distinction was made between law in general and fundamental law, and according to Bodin it was understood the king cannot alter or abolish the fundamental law.[xlviii] For example, the right of succession in a monarchy is a fundamental law; that cannot be changed by the king. British precedent was of course against that, against a law binding and making impossible parliamentary changes in the line of succession. Well, there are all kinds of influences on Filmer,[21] [including of course][22] this secular thought, the political thought of the sixteenth and seventeenth centuries. But that does not do away with the fact emphasized by Locke on at least five occasions in the *First Treatise* that Filmer's argument is a scriptural argument. And the *First Treatise* of Locke serves the purpose[23] [of] dispos[ing] of the seemingly biblical basis of the alternative to his doctrine. Therefore, the *First Treatise* is really very important, and[24] that it is today no longer studied is due to the fact that today arguments taken from the Bible do not play any significant role in political discussions. From Locke's point of view, and in Locke's time, that was the most fundamental argument which had to be met.

Student: Does Locke criticize Filmer at this point for departing from scriptural interpretation . . .

LS: How does Locke proceed in the *First Treatise*? How does he meet the biblical argument?

Student: Well, first of all he questions whether Filmer quotes the passages correctly and in context, and [he] uses certain interpretations of passages which are opposite to[25] [those] of

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[xlvii] Robert Filmer, *Observations Concerning the Originall of Government, upon Mr Hobs "Leviathan," Mr Milton against Salmasius, H. Grotius "De Jure Belli"* (London: R. Royton, 1652). These writings are currently available in the Cambridge University Press edition of Robert Filmer, *Patriarcha and Other Writings* (see note xxiii above).

[xlviii] Jean Bodin (1530-1596), was a French jurist and political thinker. In book I, chapter 8 of his *Six livres de la République* (1576), he defines sovereignty as "the absolute and perpetual power of a republic" ("La souveraineté est la puissance absolue et perpétuelle d'une République"). See the English translation in Jean Bodin, *On Sovereignty*, ed. and trans. Julian H. Frankin (Cambridge: Cambridge University Press, 1992), 1.

Filmer. And then in some cases he cites other passages not mentioned by Filmer. He refutes in that way, within the scripture, I believe.

LS: So in other words, he is really compelled to meet Filmer's argument on Filmer's grounds—that is to say, the Bible.

Student: I meant on this specific point, where Filmer talks about the king being above the law, because I think you could find, using this framework, a scriptural refutation of this, for that matter a very strong one. I was wondering if Locke does use it.

LS: That is easy. Filmer would say: "Of course the king is[26] subject to God's law. There is no question. But he is not responsible to the people for his compliance with it, but only to God." They quoted the verse from the Psalms where David says, "Against thee alone did I sin," and they took this very literally.[xlix] Being a sovereign king, I could not possibly sin against any human being, but only against God himself. The Bible proves that.

Student: But the medieval philosophers use the argument of the covenant between the king, the people, and God, and I am wondering if this couldn't be used as an argument also to refute this point.

LS: Filmer says this is school divinity. They are Catholics, and England is a Protestant country. That may be, but the question is, of course, how Locke can avoid this—for him—unpleasant compliment. He has, of course, the possibility of recourse to Hooker, who was an Anglican divine, and we shall see really how crucial that was for Locke to have this authority on his side. That Hooker took much of his argument, at least as far as natural law is concerned, straight from Thomas, Locke never mentions. But you only have to read Hooker's own text; you find all the time explicit quotations. That is part of the politics of that argument, which is not altogether irrelevant, as we will see, because it also plays a role in [the] more theoretical parts of Locke's thesis.

Student: I was going to say that in his *Essays on Natural Law*, Locke himself quotes Aquinas.

LS: We come to that. That is a very beautiful passage, but as the editor or translator notes, this does not mean that Locke read Thomas. It is a quotation from Hooker, in all probability.

I will suggest that those of you who read papers on the *First Treatise* have a look at Filmer's *Patriarcha* and see how the argument of Filmer looks in Filmer's context, and whether Locke really meets Filmer's points. That would make it more interesting than if you merely read Locke by himself.

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[1] Moved "as the earthly monarch."
[2] Deleted "that? -of."
[3] Changed from "Now to understand this doctrine—but this doctrine as stated here, regardless of where we can find the precise origin, and the thesis attacked by Filmer is clearly underlying the Declaration of Independence, with certain modifications."
[4] Deleted "a."
[5] Deleted "and."
[6] Moved "then."
[7] Deleted "(page 253 bottom)."

[xlix] Psalm 51:4.

[8] Deleted “and whichever.”
[9] Deleted “But still that is.”
[10] Deleted “(made?).”
[11] Deleted “also.”
[12] Deleted “contractual (government).”
[13] Deleted “the.”
[14] Moved “here.”
[15] Deleted “once you have not.”
[16] Deleted “value of the.”
[17] Deleted “to say.”
[18] Deleted “is that it.”
[19] Deleted “as.”
[20] Moved “in.”
[21] Deleted “and.”
[22] Deleted “and influence of.”
[23] Deleted “to.”
[24] Deleted “the fact.”
[25] Deleted “that.”
[26] Deleted “a.”

On the Law of Nature I
Session 3: January 13, 1958

Leo Strauss: You saw very clearly[i] that Locke's argument is surprisingly defective, and therefore we are confronted immediately with this question: Did he write this in a state of complete intoxication, or was he his normal self? If this latter is the case, then there must be something fishy. You also did very well in bringing out the fact that the definition given on page 111 is *the* definition. In other words, that in reading anything else we always have to contrast these other statements with the official definition. There is only one thing. You are on the right track, I believe, but you used the wrong argument. On page 112,[ii] you mentioned in passing that when he interprets Aristotle's *Ethics*, the "necessarily" is there: "so that these things are necessarily to be done by man which reason dictates." "Necessarily" does not necessarily mean "physically necessary"; it may mean "morally necessary."

Now before we turn to the discussion, we have to say a word about this book. You see that is really a kind of gift in our capacity as historians, that something should have come to light from Locke's papers, which contain the only coherent statement ever made by Locke on the natural law. You do not find such a coherent statement in the *Treatises of Government* or in the *Essay Concerning Human Understanding* or in the *Reasonableness of Christianity*. That's it, and therefore[1] [this] is in a way the most important Lockean text regarding this subject, although it was written so very early and, as our editor points out time and again,[2] Locke[3] changed his mind in these twenty-five years. In a way, yes, but I believe that in the important things not at all, and that will become very clear. You have read the introduction? Well, there are some points that are quite useful, biographically and otherwise. I learned that Locke had two friends more or less his age who wrote on natural law, and the editor traces every agreement and disagreement between these fellows and Locke. But the really important things, e.g., Hobbes, are played down, so it gives you a somewhat disproportionate picture. What is much more serious are the defects of the edition, to which I would like to refer once and for all. Take page 7 of the Introduction:

"The collection contains a leather-bound notebook in small octavo, bearing the initials of Locke's name on both the front and the back cover. Inside the cover, as was his usual practice, Locke specified the period over which he filled the notebook with entries—in this case the year is 1663. The booklet contains nine essays on the law of nature, written in Latin and in a strange hand, probably that of an amanuensis. While the last six of these essays are more or less identical with those in MS. A,[iii] the first three have nothing corresponding to

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[i] Strauss responds to a student's paper, read at the beginning of the session. The reading was not recorded.

[ii] John Locke, *Essays on the Law of Nature*, ed. W. von Leyden (Oxford: Oxford University Press, 1954).

[iii] There are three manuscript versions of Locke's Essays on the law of nature. "MS A" is the earliest and includes drafts of five of the essays and the title of another. As Strauss himself wrote, "These essays are the most detailed and the only coherent exposition of the doctrine of natural law which Locke ever wrote. He failed or refused to publish them. He completed them in 1664 . . . In 1664 he was Censor of Moral Philosophy at Oxford, and it seems that he was lecturing that year on natural law. Eight essays were completed; he also set down the titles for three others which he never wrote." Leo Strauss, "Locke's Doctrine of Natural Law," *American Political Science Review* 52 (1958), 490-501, 490.

them in that MS. Between the second essay and the third and between the sixth and the seventh there are titles for yet two others which were never written. In a continuous series Locke attached a number to each title, to those he merely contemplated as well as to those which have essays corresponding to them.[4] There are twelve titles in all, and nine completed essays."[iv]

Now have you followed the numbers? Have you seen something? I mean something very superficial.

Student: Nine and two don't make twelve.

LS: Yes. Is it not fantastic? If you edit a book—and this means that you have lived with that book for some time, of course—you can't make such a slip. It is impossible. Now one has to go over the whole ground and do the basic counting for oneself, and then one finds this. In the first place, if one counted as he does, there would be twelve, and there would be three incomplete essays. But that is entirely misleading. There are eight essays completed and three essays represented only by titles. That makes eleven. And then there is something which has nothing to do with that, the funeral speech of Locke on the occasion of his own funeral as a censor. This is in the same notebook, but it is an entirely different place and should not be counted at all. But much graver, Locke, as he points out here, "in a continuous series . . . attached a number to each title, to those he merely contemplated as well as to those which have essays corresponding to them"—and this man has the nerve not to reproduce Locke's authentic numbering. So you see, if you read Essay 7, that isn't Essay 7; that is Essay 10 in Locke's numbering. He should not spoonfeed us; he should give us the plain text of Locke. So there are eleven essays, and three are not completed. What that means, or whether it is mere accident, is an entirely different matter, but he has no right to interfere. Now a similar, I had almost said obscenity, occurs at the beginning of the edition on page 108. Let us look at that, the first note.

Student: He changes the capitalization. He determines where the word *deus* "stands for a truly theistic conception," and therefore capitalizes . . .

LS: Yes, sure. In other words, Locke wrote the Latin word for God, *deus*, frequently. One doesn't know how frequently (but that is another thing), but frequently, perhaps in all cases, with a small d, contrary to usage. And the translator writes it with a capital *D* wherever it corresponds to "a truly theistic conception." Now if we knew what Mr. von Leyden regards as a truly theistic conception, we might perhaps [. . .] But since he didn't tell us that—there is only a vague note on page 90 which doesn't help—we get an entirely different notion. Now that this is of some importance, you see from this fact. When you read Locke's later writing, the *Essay Concerning Human Understanding*, Locke speaks there in some passages of God, capitalized, and also of *a* God. Now that makes some difference, even if capitalized. So Locke did these things with some intention, and we have to trust the editor. This cannot be excused by a passage which is difficult to decipher, where every editor would have to guess. That is most deplorable. We will also come across some passages where the translation is really very misleading.

Now if we turn[5] to the text. In other words, this is not a good edition. It does not comply with certain minimum requirements of editing. That's a pity, because this will probably never be

[iv] *Essays*, 7-8.

re-edited, I assume, unless someone thinks of a critical edition of all works of Locke, and then of course it might be done.[v] But it is really a pity. I think it is also wrong to call them essays. They have much more the form of disputations.[vi]

Now let us turn then to the first essay. The plan of this first essay is this. First, Locke asserts in the first paragraph the probability of the existence of the natural law. Second, he gives the names or designations of natural law. Then he speaks about the law itself. In other words, he gives his own definition. And thereafter he gives five arguments proving the existence of natural law. Now the beginning is quite revealing. Let us read the first sentence. May I only say one word before you begin. He says "since God." It would be better perhaps to translate "since a God." We don't know whether Locke wrote here—I believe he wrote with a small d—that I conclude here from the note—but let us forget about that because there will be other, better occasions.

Reader:
Since God shows Himself to us as present everywhere and, as it were, forces Himself upon the eyes of men as much in the fixed course of nature now as by the frequent evidence of miracles in time past, I assume there will be no one to deny the existence of God, provided he recognizes either the necessity for some rational account of our life, or that there is a thing that deserves to be called virtue or vice.[vii]

LS: Now let us stop here for a moment. So that is a mere assertion: "God shows himself everywhere present" by the constant tenor of nature *now*, he says. All right, and as well as by the frequent testimony of miracles in the past. "I believe there will be no one who will not have admitted by himself that there is a God." In other words, the existence of God will be admitted by all men, is admitted by all men. But then he makes a qualification. He doesn't say by all men, but by men of a certain kind. How would you describe these men who admit the existence of God?

Student: Philosophers. . .

LS: No. I would translate this as follows: "I believe there will be no one who recognizes either that some account must be given of our life ["*rational*[6] account" is wholly superfluous here. What kind of account I don't know; perhaps after death[7]—LS] or who says that there is something which deserves the name either of virtue or vice." I believe it to mean men who are morally concerned. All men who are morally concerned will recognize the existence of God, not all men simply. And that, I believe, is confirmed by the sequel. "For if this is presupposed, which to doubt would be wicked"—and not, as he translates, merely wrong, because "wrong" could also mean a theoretical error. It is a wicked action, a sinful action, to doubt. So in other words, what Locke suggests to begin with is rather that that the natural law—no, the existence of god—is recognized by all morally concerned people and not by all men.[viii] And that leads to certain difficulties, as we shall see later. And what is the argument?

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[v] The Oxford University Press (Clarendon) critical edition of John Locke's works is still in the process of completion. A superior edition of the specific work under discussion here, however, has been published. See John Locke, *Questions Concerning the Law of Nature*, edited and translated by Robert Horwitz, Jenny Strauss-Clay, and Diskin Clay (Ithaca: Cornell University Press, 1990).
[vi] See 17, n. xx.
[vii] *Essays*, 109.
[viii] Transcribing Strauss's references to Locke's term for the deity raises a difficult problem—whether to capitalize or not. When Strauss is merely paraphrasing von Leyden's text, we have capitalized;

Everywhere we find natural law and order—planned stars and so on. Should man be the sole exception? Should men alone be lawless? That I also would translate somewhat differently: "absolutely his own master," I think this should be read. This is not credible, that man should be lawless. And "it is not credible": I would understand this to mean, on the basis of the moral consciousness, on the basis of moral concern, as stated here. Now let us see the sequel. That is a fairly long sentence and we can perhaps begin in the middle of the first paragraph.

Reader:
and there is nothing so unstable, so uncertain in this whole constitution of things as not to admit of valid and fixed laws of operation appropriate to its nature—it seems just therefore to inquire whether man alone has come into the world altogether exempt from any law applicable to himself, without a plan, rule, or any pattern of his life. No one will easily believe this, who has reflected upon Almighty God, or the unvarying consensus of the whole of mankind at every time and in every place, or even upon himself or his conscience.[ix]

LS: Do you see that here the argument has somewhat changed? That such a law exists will be recognized by everyone who has given thought to *either*—in the Latin it is perfectly clear—god, "the best and greatest," or to the universal consent of the whole human race at all time and places, *or* to himself and his conscience. In other words, here he makes the admission of a natural law independent of reflection on God. That is also important. The question with which we are confronted, then, on the basis of the first paragraph is this: Does natural law necessarily presuppose the admission of the existence of God? And what was the status of the question at that time? The editor says something about that. Well, there is a famous passage in Hugo Grotius which goes back to some scholastics.[x] Do you know what it [is?][xi]

Student: Yes, to the effect that even if there were no gods, natural law would still hold . . .

LS: If, which is certainly possible, there were no God, there would be a natural law.[xii] That was one way, and that was older than Grotius. He mentions a few of the earlier writers. But the predominant view was of course theistic. Now where Locke stands is difficult to say. In his definition he emphasizes that natural law presupposes the existence of God, but such an implication [. . .] and there are other difficulties to which we will come as we go along. Is this problem clear to you? I mean that natural law, a rule of action knowable by man's natural reason, according to one view presupposes the existence of God, a knowledge of the existence of God, and according to another[8], less common [view], does not presuppose that. But that is obviously a major question, and we will see what its fate is in this Lockean treatise.

Now immediately thereafter he gives a clear plan of what he will do now: "But before we turn to the law itself and those arguments by which its existence is proved, I believe there will be something worthwhile if I indicate the various names by which the natural law is

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when Strauss is restating his understanding of Locke's argument, we have not capitalized, in compliance with his sense of Locke's usage as stated in the text above.

[ix] *Essays*, 109.

[x] See Hugo Grotius, *De Jure Belli et Pacis Libri Tres, Accompanied By An Abridged Translation*, ed. William Whewell (John W. Parker: London, 1853), Prolegomena, sec. 11, xlvi.

[xi] In the transcript: "(means?)"

[xii] The transcriber notes: "possible may be *im*possible in previous passage."

designated."[xiii] Now then he gives here three notions of the natural law, common designations of it: the first is Stoic—the Stoics alone are mentioned, and the third is Stoic. The central one is not Stoic. The first is simply the notion that there is something morally good or honest: *honestum* in Latin, which corresponds to the Greek word meaning something praiseworthy for its own sake. There is no reference to the natural law here, as you see. And then the second notion identifies, or means by the natural law, right reason, and implies, as you see in the text, that reason does not mean here the faculty of the intellect which forms discourses and deduces arguments, but certain practical principles. In other words, reason in this second view here means the fact that there are principles of action, practical principles, inherent in man by nature. That is something different,[9] at least in intention, from the Stoic or ancient view according to which there is something praiseworthy by itself, something noble by itself. And the third view, and that seems to be the majority view, what does it say?

Reader:
Others, and they are many, refer to a law of nature, by which term they understand a law of the following description: i.e. a law which each can detect merely by the light planted in us by nature, to which also he shows himself obedient in all points and which,[xiv] he perceives, is presupposed[xv] by the principle of his obligation; and this is the rule of living according to nature which the Stoics so often emphasize.[xvi]

LS: You see, this passage, as edited and I believe translated by the author, would suggest a law[10] which all men always obey. Clearly, *cui etiam per omnia se morigerum praestat*, "a law to which everyone always in all matters shows himself obedient." A law which man cannot transgress. He notes that the text is doubtful, but he does not suggest any alternative interpretation. The use of *praestare*[11] would not in itself change the meaning, that is, if you put the infinitive instead of the indicative as he has here.[xvii] But we will come later to this question in clearer passages. The first problem, to repeat, is whether natural law presupposes the existence of God or not. The second is an ambiguity in the term "natural law." Is natural law a law which man *can* transgress, or is natural law a law which man cannot transgress? And this ambiguity, which was clearly pointed out in the report, is very important for the whole argument.

Then Locke distinguished the law of nature from the natural right. Natural right means rightful liberty. And that is the Hobbean distinction. That is the first clear sign of Hobbes's influence which you find here and . . .

Student: Why does Locke refrain from mentioning Hobbes at all?

LS: Hobbes's name was, as he put it later on, "justly decried."[xviii] In other words, Hobbes was regarded as a very black sheep, and he would compromise himself by that. I believe there

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[xiii] *Essays*, 109. Strauss's translation. Von Leyden translates Locke's Latin into English as follows: "But before we come to speak of the law itself and those arguments whereby its existence is proved, it seems to me worth while to indicate the various names by which it is denoted."
[xiv] In the original: "complete obedience to which"
[xv] In the original: "demanded"
[xvi] *Essays*, 111.
[xvii] See *Essays*, 110n4.
[xviii] John Locke, *The Works of John Locke in Nine Volumes*, 12th ed. (London: Rivington, 1824), 3:477: "I am not so well read in Hobbes or Spinoza, as to be able to say, what were their opinions in this matter. But possibly there be those, who will think your Lordship's authority of more use to them

can be no doubt about that, that this was the simple reason why he did not quote Hobbes. But this is clearly the Hobbean distinction. Whether Locke will make any use of that Hobbean distinction between natural law and natural right, that we must wait for [in] the sequel. It has not yet appeared. Do you understand the meaning of the distinction, because that is of some importance—the Hobbean distinction between natural law and natural right? Do you know the meaning of the distinction?

Student: Natural right means that there is an original liberty, a freedom to do something, which cannot be removed, whereas the natural law is binding—to do or not to do something.

LS: In other words, the natural right is not an obligation. I mean, I have the right, for example, to speak freely and say all kinds of things about the present administration, but I am not under an obligation to do so. That's clear. On the other hand, I am under the obligation to do or to omit [doing] certain things. According to Locke, and especially to Hobbes, man has certain natural rights. He *may* do certain things without being obliged to do them; there are other things to which he is obliged. And this distinction, which of course is in a way very trivial,[12] existed at all times, e.g., whether you buy or sell a house which you own was generally left to the will of the owner. There was a right to buy or to sell: no one was under an obligation, except in special cases, to buy or to sell. But [for] other things there were obligations, e.g., to military service, or to pay taxes, or what have you. But in Hobbes this distinction is emphatically applied to natural law: so there is a natural law, which establishes obligations, and a natural right. And in addition, which makes it really interesting, according to Hobbes the natural right is more fundamental than the natural law. The fundamental fact is the right which I have to do certain things. All my obligations, my natural obligations, my obligations under natural law, are derivative from the primary natural right. You wanted to say something?

Student: Do the natural rights imply an obligation for other people, so that their exercise . . .

LS: All right, even in Hobbes. But that means of course the basis is the natural right, whereas in the traditional teaching, to the extent that a teaching of rights was developed, it's the other way around. Obligation comes first and the rights are derivative. You have a right to your life ultimately, derivatively, because you owe that life and its proper use, proper virtuous use, rather than first the right to life without any strings attached to it, and then there follow certain consequences. You cannot exercise the right if you do not behave decently to your neighbors, that is Hobbes's argument. There the obligations are derivative in the final regard. But whether that distinction as made here has any significance for the argument of the early essays remains to be seen.

Now then we come to Locke's own definition of natural law, which was quoted by Mr. Goerner, [xix] and we must try to understand it. What does Locke say? He says the law of nature cannot be called the dictate of reason, because reason, being our own reason, cannot command us anything. It can suggest, it can persuade, but it cannot command. Command can

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in the case, than those justly decried names." The "matter" in question here is the afterlife. See Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), 210-11, n. 58. Cf. also 166.

[xix] Edward Goerner (1929-2012), received his Ph.D in political science at the University of Chicago in 1959 and went on to a long career teaching in the department of political science at the University of Notre Dame. He was the author of *Peter and Caesar: The Catholic Church and Political Authority* (New York: Herder and Herder, 1965).

come only from a superior who is rightfully our superior. And that can only—although he does not speak here of god, but he clearly means god must be the superior who makes the natural law truly a law. But where does reason come in, since natural law is meant to be the law knowable by reason? Where does reason come in? The natural law is law only if it is known to be the will of god, but where does reason come in? In two ways. In the first place, the knowledge that god wills it may be rational knowledge. But more important, the content. Reason tells us what is in conformity or disconformity with—how does he say it?—the rational nature. In other words, what is becoming to man as a rational being, or not becoming, that can be discerned by natural reason. But according to Locke the realization of its being becoming or non-becoming does not establish an obligation, but only a counsel. As it were, you do it at your own peril: if you want to behave like a brute, you may do so. Natural law tells us what it means to behave like a human being or to behave like a brute. But between such a statement, i.e., "Do it at your own peril," and an obligation there is a great difference. The obligation according to Locke stems from the fact that this insight of reason coincides with the will of god, that god *wills* us to behave not like brutes but like human beings [. . .] is clear, isn't it? The question is only what Locke does with this later on. Or do you see any difficulty in this distinction? He uses here a certain scholastic distinction between the formal ground or reason of a law, which is the declaration of a superior will, and the other one, which is the propriety of the law, namely, that it prescribes what has to be done or has to be omitted. So at any rate, Locke has the same freedom to begin with as everyone else; in other words, this is the natural law. And that is in itself a provisional definition which must be established by further argument, but which to begin with does not need any further requirement than to be intelligible, to make sense. Or is there a difficulty which arises already here in the definition, prior to any further considerations? What was your point?

Student: Mine referred to the problem of its being "sufficiently known to men." It must be sufficiently known, I take it, that it is the decree of a superior will. And he says that "is sufficiently known to men (and this is all that is needed for the purpose)."[xx]

LS: That is on page 113?[13] But that does not—oh, yes, that is in the definition. You are quite right. One condition of any law, in order to be obligatory, is that of course it be duly promulgated; and the natural law cannot be a law if it is not duly promulgated. And that will be the great theme of the later discussion. I think we [may] turn, then, to the argument.

The first argument is taken from two passages of Aristotle's *Ethics*. That you see on pages 112 to 113. And in general let us note that in the arguments which Locke uses, in four of them there is no reference whatever to the divine will or even to the existence of god. Only in the third argument does he refer, in a way, to god. Here he speaks at least of the wisdom of the first artificer, which can only mean god, of course. All other arguments merely assert or establish that there is a natural law in a sense, namely, prescriptions of reason as to what is proper for man, but not a law proper, if a law proper[14] must be known to correspond to the will of God. That was the point which you observed too.

There is one little difficulty in the second quotation from Aristotle. This quotation is wrong, as the editor notes on page 112, note 3. But I mention this only as a curiosity. That is the reading which we find in Averroes's commentary. Averroes was a Muslim philosopher of the twelfth century, who wrote a famous commentary on almost all writings of Aristotle, and in

[xx] *Essays*, 113.

his commentary on the *Ethics* you will find this reading which we have here.[xxi] This may be due to a misreading[15] by the Arabic translator or[16] [to] a bad manuscript, but it may also be meaningful. I note this only in passing. Whether Locke has read this in Latin translation—and it was of course easily accessible in Latin translation, Averroes's *Commentary*—and retranslated it into Greek is a matter of pure speculation, but not impossible.[xxii] So here he[17] gives two Aristotelian quotations from which it would appear[18] that the natural law is a law which is universally valid and which determines as man's duty that which[19] is becoming for man as a rational animal. Then Locke raises an objection, or rather makes someone else raise an objection, and here we enter into the real discussion. What is the meaning of that objection?

Student: Natural law is not universally valid . . .

LS: The objection is that the majority of men are unaware of the natural law. In other words, there is a law valid for man as man—the natural law—but the objectors say that as common practice shows, the majority of men are unaware of that law. How does Locke meet that issue? Does he question the fact that the majority of men are unaware of the natural law? No! An emphatic "no." And that we must keep in mind. Locke never questions the alleged fact that the majority of men, and in some times almost all men, are unaware of the natural law. And that raises a very great question: If the natural law is properly promulgated, is it then not necessary that all men, or at least most men, are aware of it? That is crucial for the whole argument here, as well as in the later writings of Locke. Do you see that? Because if men do not know the natural law, they cannot be blamed, to say nothing of punished, for transgressing it. To take a simple example like human sacrifices[20]—not an example from our society: If the people have not an inkling that there is anything wrong with that, how can they be blamed? How are they responsible for that? But if there is a natural law duly promulgated, they *ought* to have known and are responsible. And the same applies, of course, to all other human [rules] of action. So Locke never questions the fact that natural law is largely unknown, and this in itself would seem to lead to the consequence that the natural law cannot be binding or obligatory. But if it is not binding or obligatory, it is of course not a law. So the question whether the natural law is duly promulgated or not is identical with the question as to whether a natural law exists. Therefore, when Locke makes a distinction in the headings of Essay 1 and Essay 2—i.e., "Does there exist a rule of natural law?" and "Is the natural law knowable?"—that is a misleading distinction. If is it not knowable, properly knowable, it doesn't exist. Well, we should have some discussion. Is there no difficulty? I think there is some matter for talk here. But perhaps we finish at least the first essay to get a somewhat coherent picture.

Now how does Locke meet this crucial objection made here by "some people," as he says? Now the first answer of Locke is that it's men's fault. They *could* have known. If they are such irresponsible fools not to have taken the necessary care, then it is their fault. In other words, Locke makes use of a very common notion underlying all positive law: if you transgress a certain law without knowing[21] that law, the judge will say it was your duty to find out about it. How is this legal maxim?

[xxi] That is, Averroes's Middle Commentary on Aristotle's *Nicomachean Ethics*. The original Arabic version has been lost, but a critical edition of the closest thing to the original, a Hebrew version, is available in *Averroes' Middle Commentary on Aristotle's Nicomachean Ethics in the Hebrew Version of Samuel ben Judah*, ed. and trans. Lawrence V. Berman (Jerusalem: The Israel Academy of Sciences and Humanities, 1999).

[xxii] *Aristotelis Opera cum Averrois Commentariis* (Venice: Apud Junctas, 1562).

Student: Ignorance of the law is no excuse.

LS: Yes. And Locke says here: If people don't know the natural law, and admittedly the majority of men do not know it, it is their fault. They could have known it. And now the second argument[22] I believe we should read, since it is a specimen of Locke's way of arguing.

Reader:
Secondly, I answer that, although even the more rational of men do not absolutely agree among themselves as to what the law of nature is and what its true and known precepts are, it does not follow from this that there is no law of nature at all; on the contrary it follows rather that there *is* such a law, when people contend about it so fiercely. For just as in a commonwealth it is wrong to conclude that there are no laws because various interpretations of laws are to be met with among jurisprudents, so likewise in morality it is improperly inferred that there is no law of nature, because in one place it is pronounced to be this, in another something different. This fact rather establishes the existence of the law more firmly, seeing that all the disputants maintain the same idea about the law itself (for they all know that there is something evil and something good by nature), and they differ only in their interpretations of it.[xxiii]

LS: Now what does he say here? Is this a good rejoinder?

Student: This indicates that even fewer people know it.

LS: Sure. But he argues as follows. The argument is quite smart, in a way. For example, let us say there is very great disagreement among men regarding the human soul. From this it obviously does not follow that there is no human soul. Or take a still simpler example. There might be violent disagreement about the structure of the visible universe. Does this prove that there is no visible universe? Obviously not. The same applies to natural law. But what is the difference between the case of the visible universe and the natural law? The visible universe would be a visible universe even if it is not properly known, but would the natural law be a law if it is not properly known? So in other words, what we have up to now is only the great difficulty that the natural law is known at best only to a minority of men, and therefore the question of this proper promulgation is raised. And the question of the proper promulgation of the natural law is identical with the question of the existence of natural law.

On this page[xxiv] he uses two strong expressions in the Latin, on lines 8 and 15. He calls natural law here "the secrets of nature," and a bit later, "these concealed and hidden laws of nature," which amounts to this: the natural law is, far from being manifest to everyone, a very obscure thing. Now he turns to the second argument—these other things were subdivisions of the first argument, as you must have seen[23]—he turns to the second argument, taken from human conscience. Now if there is a conscience—what is the argument? If there is a conscience which accuses one's actions, there must be a law. And sometimes the conscience accuses us without any positive law forbidding the action. Hence there must be an unwritten law, the natural law. What is the status of this argument?

Student: In the first place, this [does not] establish that it is a superior will . . .

[xxiii] *Essays*, 115.
[xxiv] *Essays*, 115.

LS: Yes, sure. Now that applies to all arguments except the central one, that God is not included in this argument at all. That is true, but what is the specific defect of this argument?

Student: In this case he says that everyone passes judgment. Presumably, to do so everyone has to know the law. "Everyone passes on himself" is the sentence.

LS: Assuming that it is correct that men judge themselves and condemn themselves for actions, and not merely because these actions are forbidden by the positive law, does this necessarily prove the existence of a natural law? Well, what do the present-day social scientists say in such cases?

Student: This might just be a reflection of the climate of a particular society.

LS: Surely. In other words, certain things can be regarded as noble by this society. He does not in any way establish that, that in the name of which people judge themselves is everywhere the same. Without this the argument is of no value.

Then we come to the central argument, because three is the center of five. I'm sorry. One must sometimes remember that, because Locke, as I know from some other writings of his, makes use of that—that what occurs in the center is of special importance. Why that is so is another matter. I mean, in other words, in what respect that passage is important, that you must still find out. It is only a general warning that it is especially important. That is an observation for which there is no proof whatever, but an observation which I have made many times [. . .] And the only explicit statement I know is from textbooks of ordinary rhetoric, forensic rhetoric, in which public counsel is advised in defending a criminal to use the weakest argument in the center. You see, at the beginning everyone listens—the jury, at the moment. Toward the end, especially if he prepares it properly, and says, "Now I come to the end," which some speakers say a half hour before they finish, then of course everyone listens again. But in the middle, we have this period where everyone is drowsy. Everyone who has ever given a public speech or listened to one will bear me out. Now, in this period of drowsing there he should bring up the [weak points].[xxv] If you apply this example of forensic rhetoric to this kind of rhetoric, it means of course that the weakest arguments, i.e., the arguments which are least to be exposed to public criticism, come in the center. That is the reasoning which makes the transition from ordinary rhetoric to the kind of rhetoric which Locke here employs.

Now this is the only argument, then, in which god is mentioned. But what law does he speak of? He has here two quotations, one from Thomas Aquinas and one from Hippocrates, and as our editor helpfully observes, they are taken in all probability, or with practical certainty, from Hooker's *Laws of Ecclesiastical Polity*.[xxvi] Where do they occur there? The first statement occurs in Hooker's statement on the eternal law. The second quotation,[24] from Hippocrates, occurs in Hooker's statement regarding the law which natural agents observe. Now what does that mean in terms of our problem? The problem is: Is natural law of such a character that it can be transgressed, or is it of such a character that it cannot be transgressed? Now what about the eternal law in the Thomistic teaching as accepted by Hooker: Can it be transgressed?

[xxv] The transcript has a blank space here.
[xxvi] *Essays*, 116nn. 3, 4.

Student: By natural agents, no, I wouldn't think; but by human agents, in some sense it could be, and in another sense it couldn't.

LS: It could not. It is really the will of God, the will of God as to what actually happens. Eternal law. I do not have the quotation here, but eternal law as eternal law cannot be transgressed. It is only another aspect of the providential order, and as little as the providential order can be transgressed in any case can the eternal law be transgressed. If you do not understand these scholastic terms, you will have to look up the first book of Hooker, *Laws of Ecclesiastical Polity*, book 1, chapter 3. It is only a few pages and will be very enjoyable also to read because of the beautiful Elizabethan English. Now what about the law which natural agents observe? Is this a law which can or cannot be transgressed? I think we can say that it is, again, a law which cannot be transgressed, except in an accidental and morally irrelevant way. Bees construct their beehives always in the same way except accidentally. But there is no morality involved in a defection due to accident from the other [bees]. Natural agents move here unwittingly and unwillingly; that is the meaning of the term in Hooker, and of course in Aristotle. Now from this it follows that all beings are subject to laws which they cannot transgress; and therefore it is reasonable to assume that man too is subject to[25] law[s] which he cannot transgress. Can you give an example of such a law which a man cannot transgress?

Student: You have to breathe to live.

LS: Yes, or digestion. Or you can also take laws of psychological association, if there are such laws, and so on. At any rate, this has nothing to do with the moral law proper. That is the point which you discerned in your report very well. Now here, by mentioning God only in the argument in which he speaks of a law which cannot be transgressed, Locke reinforces the impression that the natural law proper seems to be rather a law which man cannot transgress; and that would not be the natural law in the sense of the moral law, because that is by definition a law which man can transgress. Now the fourth argument. What is that?

Student: Societies would collapse if there were no such natural law; social life would collapse. The first reason would be that the rulers would have an unlimited liberty to do whatsoever they wished, to cast the form of government any way they wish. The impression is given that it would be a tyrannical, unjust form.

LS: There is no protection against this except natural law. Yes?

Student: But the rulers on their part would not be protected either, because the people would have no reason for obeying the rulers. He says that the natural law prescribes, among other things, "obedience to superiors," although he gives no reason why this is part of the natural law. The other basis on which he says society rests is pacts, contracts. Where the fulfillment of these contracts is dependent on human will, there would not be fulfillment except accidentally. If the fulfillment of the contract were in the individual's interest, he would do so, otherwise he would not. The obligations here must come from some law.[xxvii]

LS: In other words, without natural law there would be nothing but tyranny of the rulers and rebellion of the subjects. That is his statement. But we find, in fact, [that] not always and

[xxvii] *Essays*, 119.

everywhere are there tyranny and rebellion; hence there must be natural law. All right, but he said before [that] the majority of men do not know the natural law. How come,[26] if the majority of men do not know the natural law, they do not constantly indulge in tyrannical or rebellious actions? What would common sense suggest as a way out on this basis?

Student: It would suggest that it is only common interest, individual interest, that some other arrangements be made.

LS: In other words, that men do not always live under tyrants and do not always rebel against their rulers may be due to another reason than the natural law. It may be due to calculation, for example. The rulers see it doesn't pay, and the same applies to constant rebellion. So in other words, in reading these sections one must always keep in mind Locke's admission that the natural law is not known to the majority of men. And then the weakness of the argument appears immediately. You see it especially at the end of this paragraph, if you will read that.

Reader:
The other foundation of human society collapses without the law of nature, namely, faith in contractual things, for it would [not] be expected[xxviii] that men should keep their covenants which they have promised, where a better condition would offer itself elsewhere, if there were not the obligation of fulfilling contracts established by nature and not by human will.[xxix]

LS: That's a question. Is there a more convenient condition offered to men outside of society? To put it in Hobbean terms, is not life under a Nero for the large majority of the people more convenient than life in a desert? You see? And so therefore a mere consideration of an expediential nature would be in favor of staying within society, or to use this technical term, of keeping one's contracts. Do you follow this argument?

Now what is the fifth argument? Without the law of nature, there wouldn't be virtue or vice, nor praise of probity or punishment for wickedness, no guilt, no fault where there is no law. Now read the next sentence.

Reader:
Everything would have to depend on human will, and, since there would be nothing to demand dutiful action, it seems that man would not be bound to do anything but what utility or pleasure might recommend, or what a blind and lawless impulse might happen perchance to fasten on."[xxx]

LS: Let us stop here. Do good men lack completely all orientation if there were no natural law, if there were no distinction between virtues and vice? Locke adds a qualifying clause.

Student: There would be an orientation through utility or pleasure.

LS: Either utility or pleasure or a blind impulse. The central thing is pleasure. I mention this in passing for those who consider it possible that the central position has a certain

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[xxviii] In the original: "for it is not to be expected." The Latin is "*non enim . . . expectandum . . .* "
[xxix] *Essays*, 119. The reader's translation. In the original: "Without natural law the other basis also of human society is overthrown, i.e. the faithful fulfilment of contracts, for it is not to be expected that a man would abide by a compact because he has promised it, when better terms are offered elsewhere, unless the obligation to keep promises was derived from nature, and not from human will."
[xxx] *Essays*, 119-21.

importance, but at any rate let us leave it at interest or pleasure. It is not excluded by the argument that interest or pleasure might give men some orientation. Now we know from Locke's later writings, the *Essay Concerning Human Understanding* especially, that he was a "hedonist" later on. What does hedonism mean?

Student: Gauging everything by the pleasure in it; judging on making a scale of your values according to the pleasures.

LS: Terribly learned. I would simply say hedonism means to assert that the good is fundamentally the same as the pleasant. "Good" is equal to "pleasant," to "pleasure" or "conducive to pleasure." That's all. And that was the position which Locke later on took. But I must warn you: in the last essay here, Locke attacks the principle that private utility could be the ground of natural law. Now we must see what he does there. At any rate, one can discern in the first essay, judiciously read, a kind of presentation of the natural law with an indication of the problem:

(a) Does natural law presuppose the existence of God or not?
(b) Is the natural law duly promulgated or not?
(c) Is the natural law a law which man can transgress, or is it a law which he cannot transgress?

These are the three great themes suggested in the first essay, and they throw some doubt on the traditional notion of natural law. Then the consequence seems to be complete absence of moral orientation. But here a suggestion is made that there could be interest without any regard to obligation, which could give man the fundamental orientation so that obligation proper would perhaps come in only by virtue of the positive law. Of course we cannot believe [ourselves] to have settled that question on the basis of these eight pages, but this difficulty appears already here. Now before we turn to the sequel, to the second essay, I would like to know whether there is any point which is sufficiently prepared for discussion. These are very important questions, and I am surprised that I seem to be the only one who senses that. I can't believe that.

Student: I have some doubt about Locke's form here, the type of form which he is following in his argument. Is it his intention simply to raise the problems in this first essay?

LS: No. You see it from the heading: "Does there exist a rule of manners or law of nature? Yes." And then, after having stated the problem, he says that there are the following arguments[27]: "If these things are laid down, the following arguments persuade that there exists a law of this kind," meaning a natural law.[xxxi] And these five arguments are meant to establish it, i.e., the existence of a natural law.

Student: But he doesn't feel it's necessary to be any more detailed as to the nature of that whole argument. In other words, he leaves a lot of loose ends hanging as to the nature of the law.

LS: The only clear statement as to the essence of the natural law is the definition which was quoted in today's report, that the natural law is an expression of the will of God dictating and

[xxxi] *Essays*, 111/112. Strauss's translation. The Latin reads: "*His ista positis hujusmodi dari legem sequentia suadent argumenta*."

making obligatory what is in conformity or in disconformity with man's nature. That's the definition given. Now that such a law fulfilling all these conditions exists is not proven by any of these arguments. On the contrary, the arguments suggest great difficulties, and especially this point, brought in the form of an objection by someone, according to which the majority of men are unaware of the natural law. Locke never contests this, and everything turns . . . That means, of course, the problem of the due promulgation of the natural law, and the due promulgation of the natural law is identical of course with the existence of the natural law. That's it.

Now one point which I would like to mention immediately: according to the Thomistic teaching, it was never said that all men have full knowledge of the natural law. But due promulgation consists in knowledge of the principles of natural law. Therefore the whole discussion will turn in the sequel around this question: Are the principles of natural law known to everyone? And Locke, as we shall see, will deny that, and that of course is a complete break. But Locke blurs the issue a bit by not always distinguishing between the natural law as a whole and the principles of natural law. The natural law as a whole—that was not the question. That required the activity of reason, in some cases, of reason of very wise men and certainly not something available to everybody. The question concerns the principles—[xxxii] . . . that is a very long question, and a very great question in Locke. Is the natural law known if the natural law is not *known* to be the will of god? Take an example. The natural law may tell everyone, every human being, that murdering human beings is bad, wicked. According to Locke's definition that would not yet make it a natural law if you do not know that murder is forbidden by god. You see? That is a long question, how far the existence of god and the natural law being the will of god must be known by man. Locke will discuss this later on: the undeniable variety of human customs. For example, think of polygamy and monogamy. Can monogamy be an institute of natural law if in many nations it is denied to be a law?

Student: Why not?

LS: But the question[28] [is], if the natural law is in principle known by nature, must not all men know the wrongness . . .

Student: Isn't it that it has to be knowable in principle?

LS: If we take the example discussed by Thomas in the question on natural law,[xxxiii] and that, I believe, was theft in Sparta or among the ancient Germans. Is this not correct? Now here you have a nation which says theft is good. Theft is, according to the natural law, bad. And here a whole nation is ignorant of that. So Thomas knew that. What is his answer?

Student: That they are potentially able to . . .

LS: But what is the explicit argument?

Student: That these things can be corrupted, that these principles of natural law can be corrupted by men's passions, even for quite long periods of time.

[xxxii] There is a break in the tape at this point.
[xxxiii] *Summa Theologica* I-II, q. 94, art. 4.

LS: In other words, then the children born in later generations are excused for their ignorance because they really could not, with their relatively weak reason, fight against the very powerful age-old precedents. So in other words, the variety of human customs even regarding moral principles was of course considered in the scholastic doctrine. Nevertheless, a very clear and important, if subtle, difference exists between the Lockean teaching and the Thomistic teaching,[29] because for Thomas the dignity and truth of the natural law are not impaired by this fact of considerable corruption and obfuscation. For Locke it is completely destroyed by that. We must keep this subtle line clear.

Student: I don't see so clearly why it is destroyed by not being known. Certainly many of the arguments he uses presuppose that it doesn't have to be known.[xxxiv]

LS: No, that is impossible. I mean, it cannot be obligatory if it is not known.

Student: I'm not sure if I remember correctly, but does St. Thomas speak of natural inclinations?

LS: Yes, sure.[xxxv]

Student: It would seem to be not so much a matter of knowing.

LS: In other words—let us put it in a colloquial way: men are instinctively aware of it without truly knowing it. That is correct. Then the question comes down to this question, which Locke states in one of these omitted essays[30]:

"At the end of this essay Locke added the title of another which remained unwritten, namely, *An ex Inclinatione Hominum Naturali potest cognosci Lex Naturae? Negatur*. ('Can the law of nature be known from man's natural inclination? No.')."[xxxvi]

That is the central essay, essay number 6, among the eleven. And that is of course a decisive device. Locke denies that man is by nature inclined toward virtue. That settles it. In the meantime he will assert it, and then finally he will deny that. He will go through all these motions. But since you brought this question up, we had to mention this already now. That is the real issue. And you see he did not elaborate this most important essay, but he tells us what he would have done in it, so we are not wholly uninformed. So that is clear. That is indeed the issue: Is man by nature ordered toward the perfection of man—as Aristotle, and Thomas, and generally speaking, the scholastic teaching said—or is the perfection of man a mere desideratum which reason figured out without having any support in man's natural inclination? That is the issue. Needless to say, if virtue or perfection is understood as something figured out by man and not something toward which men by nature tend, the content of that virtue [differs] from what it was in the older teaching. So that is the issue. Is this helpful now? You see the problem of how far people agree and disagree regarding moral principles: the evidence there is not conclusive either way. Those who say there is nothing whatever in common cannot maintain what they say, otherwise there would be no possibility of an understanding. Those who say there is a fundamental agreement get into troubles, because you always find a very strange tribe which does something very outlandish for which you cannot account. So the evidence[31] there [is] not conclusive. The fundamental point in the

[xxxiv] "doesn't have to be known" is the transcriber's correction of "would have to be known."
[xxxv] See *Summa* I-II, q. 94, art. 2.
[xxxvi] *Essays*, 158n3.

question concerns the nature of man. Is man by nature inclined, in the old sense of the word, has he a bent toward virtue or not?

Student: In that passage where he quotes from Aristotle, the second quote,[xxxvii] there is some confusion there between right and law. In the place where he quotes Aristotle, he talks about right being presumed to be natural, and then he shifts and uses his argument based on right to that of law.

LS: It is a bit subtle and for this reason I didn't stress it. You are quite right. But it is a long story, and I will try to make it as brief as I can. *Jus* (right) is the Latin for the Greek word [for] "just," which of course is a word used by Aristotle.[xxxviii] To that extent, Locke simply follows the Greek usage, you can say. But since it occurs in this context, where such a distinction between law and right is made, it suggests all kinds of tricks. But in itself, it is of course something very harmless.

Student: It would also suggest that he knew about the [. . .] which is left out of the definition.

LS: Yes, sure. He quotes the text here without looking into it. The misquotation, or the error, is the same as that underlying Averroes. I mentioned this before. So we have now already anticipated a later development of the greatest importance, and that is the question of the natural inclinations of man, which Locke did not discuss in a special essay but one which we will see he discussed in fact. I will only state to you very briefly his argument, and you will recognize [in it] quite a bit of present-day social science, even. These are not old, obsolete discussions, contrary to what the editor says on the very first page, that the issue is obsolete. Namely, this: How do we know about the natural inclinations of men? Answer: We have to look at men. But if we look around, we see that men have the most different inclinations. And now let us facilitate things and say, "Let us not speak about the inclinations of all men but only of the inclinations of most men." And then Locke asserts [that] if he looks around, he sees that most men have a natural inclination to their private advantage, and even to their *immediate* private advantage and to nothing else. So the natural inclination of man, so far from supporting virtue and justice, abjures virtue and justice completely. I believe you must have heard this argument, with the use of many more technical terms, in almost every social science course. Here it is. We will come to that later.

Now let us turn to the second essay. I [will] also try to give you the plan. There is first an introduction, the first paragraph; and then Locke distinguishes three possible forms of cognition, which he discusses[32] one after the other. The three possible forms of cognition are inscription, tradition, and sense perception. In the center is tradition, and tradition is the chief subject of this essay, in accordance with that rhetorical rule that the center is the most important—not absolutely, but in the context. And in this essay, tradition is the most important. And then at the end he defends the last and most important form of cognition, namely, sense perception, against an objection. Now let us read the first sentence.

Reader:

[xxxvii] *Essays*, 113.

[xxxviii] The Latin noun *ius* ("*jus*" is the Medieval spelling) is the equivalent of the Greek *to dikaion*, which is generally translated into English as "the just."

Since some principle of good and evil is acknowledged by all men, and since there is no nation so savage and so far removed from any humane feelings that it does not have some notion of virtue and vice, some consciousness of praise and blame—[xxxix]

LS: You see here the vagueness—"some"—which would be admitted by every present-day anthropologist, of course. Some notion of the base and noble exists everywhere. But if they are different from place to place, there you are. And also later on: who do "not have some notion of virtue and vice." Of course, everywhere things are praised or blamed. That does not prove natural law.

In the next paragraph he first excludes revelation as a possible source of the natural law, because revelation is supernatural and can therefore not be knowledge of the natural law by man's natural light. You found something fishy here?

Student: Because what he calls revelation—he says, "supernatural and divine revelation, but this is no part of our present argument. For we do not investigate here what a man can *experience*—"

LS: "what he can *know*."[xl]

Student: "who is divinely inspired, or what a man can behold who is illuminated by a light from heaven—[xli]"

LS: But only what he can know by his natural faculties.

Student: Yes, but this presumably does not include scripture, at least immediately.

LS: Well, at this point I'm not sure. He uses these terms which remind more of classical . . . biblical . . . But that was quite common. You would find this expression also in other "humanistic" writings.

Student: But then when he talks about tradition . . .

LS: We come to that later.

Student: It seems to me that scripture would have to be subsumed under that and not under this.

LS: Then we would have a clear contradiction between the admission of revelation—although revelation cannot be a source of natural law, but it exists—and a denial of that later. But here I am concerned only with the simple . . . But where is the difficulty? If you take the problem, I think Locke's definition is applicable. It is not scripture as scripture which, according to the orthodox Protestant doctrine, gives you the word of God. Something has to be added.

[xxxix] *Essays*, 123.
[xl] Strauss corrects von Leyden's translation. The Latin is "*scire*" (to know).
[xli] *Essays*, 123. Emphasis added.

Student: But what has to be added[33] for Locke is that you have to establish it naturally, that it is reasonable, and what anyone else says . . .

LS: No, not here. I mean, if you stick to this passage. In Locke's doctrine it must be the inner witness of the holy spirit. That has a character of revelation. It is[34] personal, although it is not meant that everyone has a vision like a prophet or someone, but there is something which goes beyond the natural faculties and is fundamentally different from them, which "speaks" in every pious figure.

Student: And it illuminates the scripture, doesn't it?

LS: Yes.

Student: Which illuminates the scripture, and the fact that these words written in scripture were said by Christ, for instance, is taken on the word of the disciple who writes them.

LS: Yes, but it must speak in each individual, otherwise we will read the Bible like . . . How would this be in the Catholic doctrine? I believe that ultimately . . .

Student: [. . .]

LS: Yes, sure. So in other words, when we speak of the tradition, I think it is understood that a tradition of the church is not a tradition like every other tradition. So the essential difference between the supernatural and the natural would come in. You are quite right in your guess regarding the section on tradition, I believe, but we will come to that later. Now let us see.[35] He speaks in the sequel of the extent of natural knowledge. Here the translation is not very good, but let us begin to read here[36].

Reader:
For all this sort of learning, whatever its extent (and it certainly has made great progress), traverses the whole world and is not confined within any of its limits—"

LS:
which pervades the whole nature of things and is not circumscribed within the limits of the world; it enters heaven itself by contemplating heaven and has investigated with greater accuracy than formerly spirits and minds, what they are, what they do, by what laws they are bound; this whole knowledge, which is one, comes to us from those three manners of knowing.[xlii]

[xlii] Ibid., 125. This is Strauss's translation of Locke's Latin, which reads as follows: "*quae omnis cognitio quantacunque est, quae certe magnos fecerit progressus, quae totam pervadens rerum naturam nec inter limites mundi circumscripta caelum ipsum contemplatione ingreditur, et spiritus mentesque, quid sint, quid agant, quibus legibus tenentur, accuratius inquisivit, haec, inquam, tota cognitio una e tribus illis sciendi modis ad animum pertingit . . .* " (*Essays*, 122-24). Horwitz, Strauss-Clay, and Clay translate this passage thus: "All this knowledge, however great its extent, has certainly made great progress. Penetrating the entire nature of things and not circumscribed within the limits of [this] world, it enters heaven itself in its contemplation and has with fair accuracy inquired of spirits and minds, their nature, their actions, by which laws they are bound. All this knowledge, I say, reached the mind by one of these three modes of knowing." See *Questions Concerning the Law of Nature*, 121.

What Locke wants to say, and that I think he[xliii] misunderstood completely, is that this whole knowledge of the bodily or visible universe, of what he calls heaven—which is beyond the world, mind you, whereas in ordinary language heaven is part of the world—and mind and spirit, this whole knowledge is one. That this interpretation is correct—and by the way, I think it is the only way to account for the text—is proven by the end of the *Essay Concerning Human Understanding*, where Locke made this remark. He divides all science into three parts: physics, practical knowledge, and what we call logic. And of physics he says [it is]

"the knowledge of things as they are in their own proper beings, their constitutions, properties, and operations, whereby I mean not only matter, and body, but spirits also, which have their proper natures, constitutions, and operations as well as bodies. This in a little more enlarged sense of the word I call [*physikē*] or natural philosophy. The end of this, is bare speculative truth, and whatsoever can afford the mind of man any such [i.e., speculative truth—LS] falls under this branch, whether it be God himself, angels, spirits, bodies, or any of their affections."[xliv]

So in other words, Locke deliberately reduces or denies the distinction between physics and metaphysics and makes that all part of one science, and he does that already in this early writing. I cannot go into the history of this distinction, but it is certainly remarkable. "Heaven" can here only mean god, because it is beyond the world, obviously. It does not confine itself within the limits of the world. That cannot be the sky, as the translator says; it can only be god. And "spirits" he mentions here, too. But at any rate, this may be of some importance for later consideration. But we must note this here.

Now he comes to the three ways in which we could have acquired natural, i.e., not supernatural, knowledge. These are inscription, tradition, and sense perception. Inscription is rejected in a relatively brief paragraph, but he will devote the next essay to it, so we will come to that later on. I mention only one fact which is important. He says here[37] that inscription would be the easiest and most convenient method of knowing natural law.[xlv] In other words, if the principles of natural law were implanted in our minds, that would be the best way. But it isn't; it doesn't exist. The best way is not available. On the same page, earlier, he[38] [puts it] this way, "that would be a benefit of nature." How does he[xlvi] translate "benefit"? A good deed, a kindness of nature. This kindness does not exist. We are more toughly treated. We must work hard. This will come out later, but I note this theme already now.

So there are no innate principles. That is merely asserted. And then the main argument is that tradition cannot be the way toward knowing the natural law. That is a very difficult passage, and at my first reading I had the same impression which you apparently had in your report, that this amounts to a tacit denial of the possibility of revelation. But on my second reading, I was not sure that I was right.

Student: At least, the relevance of revelation.

[xliii] That is, von Leyden.
[xliv] John Locke, *An Essay Concerning Human Understanding*, 4.21.2.9-17. See the critical edition by Peter H. Nidditch (Oxford: Clarendon, 1979), 720. The last sentence quoted above does not end with "affections" but continues with "as number, and figure, etc."
[xlv] *Essays*, 127.
[xlvi] That is, von Leyden.

LS: Yes, but that is the same thing. You cannot assume revelation and say that it is irrelevant. No, that is obvious . . . So what is the point then? Can you repeat your argument?

Student: From tradition, you take it on the basis of what someone else reports to you in one way or another, which is to say you take it on trust. And therefore, number one, it is not innate, you don't establish it yourself, and it is less strong than that which you establish yourself.

LS: Yes, but more simply: you simply do not know anything of natural law. You know that Mr. X, whom you respect highly, told you this is good. What you know with certainty is that Mr. X says that. You do not know that this is good unless he proves it to you. But then Mr. X is only an uninteresting vehicle. So tradition as tradition cannot be a source of knowledge of the natural law. It can be of course a source of knowledge of assorted facts, that is, of certain facts. But there is something else which I believe he indicated that you also seem to have seen. He starts first as follows. Tradition cannot be the source of natural law because there is such a great variety of traditions in general. Secondly, within the traditions there are varieties of interpretation of the tradition. So you have not only the variety of traditions, you also have the variety of interpretations of traditions within the traditions. So tradition does not look too promising as a way to knowledge. And that, I think, was the first argument. Now what about the second argument?

Student: I think we have covered that. It wouldn't be knowledge . . .

LS: Yes, it would be faith, as he puts it: faith, and not knowledge. And the third argument?

Student: It must have been started by someone. It wasn't always tradition. Whoever started it got it by either of the other two ways.

LS: So traditions necessarily presuppose a way of knowledge that is not tradition, and therefore under no circumstances can tradition be the source of natural law. Now he concludes this by saying:[39] "if there is a law of nature (and this nobody has denied), it cannot be known in so far as it is a law by means of tradition."[xlvii] In other words, you can know by tradition that this is not nice, because your parents told you, and your teachers and so on. You do not know it separately; as a law it can never be knowable in this way. Why does he make this addition, "*qua* law"? Because my explanation is not sufficient, as we will see. I mean, does not the same apply also to this proposition? This does not become a human being; it is unbecoming for man as man. According to Locke, this is not a law. Also, that cannot be *known* by tradition, because tradition merely tells you it is not nice. People say it is not nice, but whether they are right or wrong, the tradition as such cannot tell you. Why does he add that?

Student: I just looked back at the definition, the central definition of law which he gives. As such, presumably it would not be known to be true as law . . .

LS: What would this mean? That if men believed in the divine origin of the natural law—but [believed that] this divine origin is known only by revelation, is that what you mean? . . . They would not know the natural law, because they would know that this law

[xlvii] *Essays*, 131.

corresponds to the will of god only by revelation. But such knowledge that it is the divine will is of the essence of the natural law as natural law. That may be. I must think it over.

Now here you see, by the way, another characteristically Lockean thing in this little paragraph which we read. Is there something which is very striking, not to say shocking?

Student: This little remark that no one has denied the existence of the law of nature.

LS: Why is this shocking, or striking?

Student: Because he presented previously one argument against the existence of the law of nature.

LS: That would not be good enough. Let us turn to that passage[40] and read the first line: "Some people here raise an objection against the law of nature."[xlviii] Let us always be exact. Locke, in other words, knew very well that there were people who denied the natural law, and yet he has the impudence to say a few pages later that no one has denied it. It is a bit weakened by the use of the subjunctive, but still it amounts to the same thing. What does he achieve by that? Because we will find more examples of the same kind as we go on, that is, where he says, "No one has denied that," and he himself says before or after that people, maybe many people, have denied that. What does he achieve by that? He is a great politician. Well, what is the consequence if someone makes such a remark[41] [as] this?

Student: It seems careless for one thing. It gives the impression of forgetting what he has said before.

LS: Yes, but what is the effect?

Student: He puts you off your guard.

LS: Sure. He confuses the issue by acts of kindness. That's not an issue, he says. Everyone admits natural law. Well, that is of course a soporific statement. If everyone admits it, then there's no question. I have not found this used by any other writer as frequently. As a matter of fact, I would not remember a single case where any other writer uses this soporific device. And that creates the impression of a kind of sleepiness, good-natured sleepiness, which Locke makes at a first acquaintance—at least he made that on me. You know, a kind of commonsensical *bonhomie*. And this is one way he achieves that: "Well, we are all good fellows," and so on.

Student: In the Epistle Dedicatory of his *Essay on Human Understanding*, he talks about contradictory arguments and how[42] [they] may affect the palates of different people, and therefore he is going to season[43] these arguments in different ways. This might be one indication of this.[xlix]

[xlviii] *Essays*, 113.

[xlix] The speaker appears to have in mind the Epistle to the Reader, 8 (Nidditch).

LS: I don't remember that, but I know it from his practice. I mean, in the *Reasonableness of Christianity* and in the *Essay Concerning Human Nature*,[l] in crucial passages he always says, "Everyone admits that," and in other passages he clearly says that these are very controversial points. So he knew that already when he was thirty-four. He could go far with that in the world. Now let me see whether there is any other point which we should mention.

The conclusion is, then, from this argument: tradition is not the way to knowledge of the natural law. Inscription, as will be shown in the next essay, is not the way to the natural law. Hence there remains only one way: sense perception. But what does that mean? Can the natural law be seen, or heard, or as he even indicates, touched? Obviously not. It means that by sense perception, and reasoning on the basis of sense perception, we arrive at the knowledge of some god,[44] the author of all these sensibly perceived things. Once this is established, there necessarily follows the universal law of nature by which the human race is bound, as will appear in the sequel. So in other words, the demonstration of the existence of god is the necessary and sufficient condition of the proof of natural law. Therefore, what we have heard in the first essay can at most be arguments of probability. The proof goes via the proof of the existence of God. It is clearly stated. This is not only the necessary condition; it would seem from this passage that it is also the sufficient condition: once this has been established, it follows necessarily. And Locke contends that this is the only way of establishing the natural law: the proof of the existence of God starting from the sensibly perceived things. Again, a difficulty arises, as we see from the next paragraph:

Reader:
Against this conclusion [of ours]—

LS: "this our view."

Reader:
the following objection readily presents itself: if the law of nature becomes known by the light of nature, how does it happen that where all are enlightened there are so many blind, since this inward law is implanted by nature in all men? How does it arise that very many mortals are without knowledge of this law and nearly all think of it differently, a fact that does not seem possible if all men are led to the knowledge of it by the light of nature?[li]

LS: You see, here he does the same thing in the second essay which he did in the first. The crucial difficulty is brought in as an objection of someone else. In the rejoinder he does not question the fact of very general ignorance of natural law; he only questions or seemingly questions the interpretation. Now how does he meet the issue? Most men do not know the natural law, and yet the natural law is obligatory. How does he meet that issue? You see that this is really crucial, because if the natural law is unknown to most men, it is not properly promulgated, and therefore it cannot be a law. It is a question of life and death. How does he meet it, in this section?

Student: They have to equip themselves to know it.

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[l] Strauss means the *Essay Concerning Human Understanding*. Locke's *Reasonableness of Christianity* (*The Works of John Locke in Nine Volumes*, vol. 6) is currently available in *The Reasonableness of Christianity*, ed. John C. Higgins-Biddle (Oxford: Clarendon, 1999).
[li] *Essays*, 133.

LS: In other words, God demands of men that they acquire by their effort the knowledge of natural law. If they do not know it, that's their fault. The law is duly promulgated, therefore, but men do not take the trouble. Now there arises this difficulty. Before men can be found guilty or blameworthy for not taking the trouble, they must have some information about the necessity of taking the trouble. They must perceive this. That, of course, is not even mentioned, but there is another point which I believe is more important, a very brief note on the next page. He gives a comparison:[45] "The nature and properties of figures and numbers appear obvious and, no doubt, knowable by the light of nature; yet from this it does not follow that whoever is in possession of mental faculties turns out a geometer or knows thoroughly the science of arithmetic."[lii]

Just as arithmetic and geometry remain true, however small the number of competent mathematicians, in the same manner the natural law remains true, no matter how ever small the number of knowers of it. But this has the difficulty that the natural law is much more vague than mathematics.

"Careful reflection, thought, and attention by the mind is needed, in order that by argument and reasoning one may find a way from perceptible and obvious things into their hidden nature. Concealed in the bowels of the earth lie veins richly provided with gold and silver; human beings besides are possessed of arms and hands with which they can dig these out, and of reason which invents machines. Yet from this we do not conclude that all men are wealthy. First they have to equip themselves; and it is with great labour that those resources which lie hidden in darkness are to be brought to the light of day. They do not present themselves to idle and listless people, nor indeed to all those who search for them."[liii]

You see, he compares now the natural law (a) to knowledge of mathematics, and (b) to digging for riches. What is the . . . the point of view with a view to which the comparison is made? In both cases, the things are hidden: the mathematic truths are hidden, the riches are hidden, the natural law is hidden. Therefore, it is by nature difficult of access. Now what he says here at the end of the passage which we just read is this: Some people are just lazy and they don't deserve to be rich. But what about the others? There are some who search and don't find. What would be the parallel to that in the case of the knowledge of natural law?

Student: Some men can't prove the existence of god . . .

LS: No, I mean human qualities. The idle are in both cases the same. What corresponds to the vain seeking for riches in the case of the vain seeking for the natural law?

Student: [. . .]

LS: Yes, lack of intelligence, and lack of intelligence of course excuses. But there could be something else. I mean, is intelligence the only condition for reaching knowledge?

Student: Some dig for riches and there aren't any riches there in the first place.

[lii] *Essays*, 133-35.
[liii] *Essays*, 135.

LS: Yes, you must have seen that in a movie. But let us see this other [element]. That intelligence is a condition for having knowledge is true, and some people are not able to. But that is not sufficient. A man may be very intelligent and . . .

Student: He is misdirected by society. He could be in a society in which everybody does things which are so far off that he doesn't think . . .

LS: Then you could say it is the fault of that society. But is there not a more obvious thing?

Student: [. . .]

LS: Then you could say that is in a way, together with the sense, good. But I think that is only a modification of understanding. But something very obvious: Aristotle speaks of it all the time. What is the most obvious condition of science, philosophy, or other pursuits of this kind?

Student: A good society, leisure . . .

LS: Leisure. Well, is there not a presupposition of leisure?

Student: Some wealth.

LS: Some wealth, surely. If you have to work hard sixteen hours a day, you will not be able to be studiers of the law of nature, to use a term which Locke used later on. [liv] And therefore the question of the kindness of nature, to which he has alluded in a long passage, is so important. If nature compels man first to establish a basis for any higher pursuit,[46] [or is] stingy to man, then the majority of men may be ignorant of the natural law without any fault of theirs. That's the point. I remember passages from later writings where he says that such and such people expect every spinster and dairymaid in England to be a knower of the natural law. He didn't mean that the spinsters and dairymaids are particularly lost in spiritual darkness; he simply meant they do not have the time for that. It applies to some males, the opposite numbers, which he also mentions there. This theme, I think, will become clearer from what he says, or suggests, regarding the so-called state of nature in the *Treatises of Government*. If the state of nature is one of plenty, there is no problem. And Locke seems to say it is a state of plenty, but he also seems to say in other passages that it is a state of great poverty, and then the opposite conclusion follows. That is, I believe, the only relatively clear passage, at least which I remember, in which Locke indicates that ignorance of the natural law may be without guilt or fault. And this is of course crucial for the whole argument.

In closing I would like to mention only one point which came up today occasionally, although I don't remember in which connection. The argument of Locke proceeds in one way as follows. Here in the second essay he says there is one condition of the natural law: the existence of god. In the fourth essay he will say there are two conditions, explicitly. This is a subdivision of the problem. There is not only the existence of god: you also have to know certain attributes of god, a further distinction. Then still later on he says a third condition is

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[liv] Cf. *Second Treatise*, sec. 12: "for though it would be beside my present purpose to enter here into the particulars of the law of nature, or its measures of punishment, yet it is certain there is such a law, and that, too, as intelligible and plain to a rational creature and a studier of that law as the positive laws of commonwealths, nay, possibly plainer, as much as reason is easier to be understood than the fancies and intricate contrivances of men, following contrary and hidden interests put into words . . . "

required. I think you mentioned it in your report, i.e., the immortality of the soul. And therefore the whole thing stands absolutely in mid-air.

Student: In the definition of law which he gives on page 111, he indicates nothing with respect to reward or punishment. In the fifth argument he suggests, it seems to me, that there must be reward or punishment or nothing will be obeyed. Therefore, it would seem that reward or punishment is an integral part . . .

LS: Well, he says it later much more explicitly than in this passage: No law without punishment. And that means, of course, these punishments must [not] be after death. He makes it clear. In other words, I believe we will see when we are through that the position presented in this book is in no important way different from that presented twenty-five years later in the *Treatise of Government* and in the *Essay Concerning Human Understanding*. I mean, the negative position is the same: the rejection of the traditional natural law teaching. What is of course missing is the elaboration of the new kind of teaching, and especially the issue of property, which is such a crucial premise in the *Treatise of Government*, barely emerges. It is perfectly possible that Locke at that time had not yet thought of this particular brand of doctrine which he developed later on with such tremendous success for many generations. But this material is of very great help for the understanding of Locke, because here is really the only coherent presentation of his natural law teaching.

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[1] Deleted “that.”
[2] Deleted “that.”
[3] Deleted “has.”
[4] Moved “Thus.”
[5] Deleted “now.”
[6] Deleted “life.”
[7] Deleted “Some account must be given.”
[8] Moved “view.”
[9] Deleted “or.”
[10] Deleted “to.”
[11] Deleted “(see Ft 4, p. 110).”
[12] Deleted “—that.”
[13] Deleted “(at top of paragraph).”
[14] Deleted “must have been.”
[15] Deleted “or.”
[16] Deleted “by.”
[17] Deleted “[Locke].”
[18] Deleted “that a natural law.”
[19] Deleted “becomes.”
[20] Deleted “note.”
[21] Deleted “of.”
[22] Deleted “(page 115, the second paragraph).”
[23] Deleted “Then.”
[24] Deleted “that.”
[25] Deleted “all.”
[26] Deleted “that.”
[27] Deleted “(page 112, end of first paragraph).”
[28] Moved “is.” Deleted “concerns.”
[29] Deleted “Because.”
[30] Deleted “(page 158, note).”
[31] Moved “is.”
[32] Deleted “then.”
[33] Deleted “for him.”
[34] Deleted “a.”
[35] Deleted “Then.”

[36] Deleted “page 125.”
[37] Deleted “(bottom, page 124).”
[38] Deleted “calls.”
[39] Deleted “(page 131).”
[40] Deleted “(page 113).”
[41] Deleted “like.”
[42] Deleted “it.”
[43] Deleted “his.”
[44] Deleted “(page 133).”
[45] Deleted “page 133.”
[46] Deleted “like being.”

On the Law of Nature II
Session 4: January 15, 1958

Leo Strauss: I had one difficulty.[i] I share your general suspicion, but that is not the point. Here you present to us today the central argument of Locke proving that the law of nature is knowable by natural light via the demonstration of the existence of god. Now your reasoning, at the end especially, was based on the assumption that this demonstration is not good, or at least is not good according to Locke. This I didn't see clearly. Do you believe it is not good in itself, or do you believe it is not good according to Locke? Because we are primarily concerned of course with the latter, with how Locke understood this.

Student: I believe both.

LS: Well, all right, but let us stick to the Lockean angle. What evidence do you have for assuming that Locke did not believe in the goodness of this demonstration?

Student: I wouldn't go so far as to assert he didn't believe in it . . .

LS: Well, show me a case in which this appears unambiguously. If you say that Locke asserts all the time that the natural law is unknown to the large majority of men, Locke would answer to that: "Of course. They don't know anything of the beauties discovered by Galileo and Newton; they are not physicists. But now we know. Of course you have to be a properly trained man to have true knowledge." So in other words, a tiny minority knows of the natural law, and perhaps only since the seventeenth century. That is not an absurd position. I mean, it is at least possible as a position. People talked about the natural law all the time. They divined it in a way in the past, but now we can establish it on a solid foundation by virtue of the great progress made in natural science. What would you say to that?

Student: My reference to the long passage about god was to indicate that he doesn't really pursue the argument. At least I had the thought that he lost faith in it; he gave it up. He didn't derive men's obligations from reasoning about the will of god, but he snuck back in with this . . .

LS: But you see, that is in a way very shrewd of you, but it is also a capital crime. Because these impressions, you see, are not the real proof. You see that. But I believe there is some real proof in the text which we are discussing today and we will take this up when we come to it.

There are two points which you made which I found especially interesting. Locke returns to what the translator calls the primitive people—although Locke means the barbaric people—and they are the men who really live according to nature, according to Locke. There was a time, I believe in the nineteenth century, when these primitive people—or preliterate, underdeveloped, etc.—were called natural nations. I don't know the English equivalent of the German term *Naturvölker*. Is there an English term, "natural nations," "natural tribes,"

[i] Strauss responds to a student's paper, read at the beginning of the session. The reading was not recorded.

applied to these primitive peoples?[ii] At any rate, that is what Locke implied: these savages, they are the really natural people. What would Aristotle say to that proposition?

Student: [. . .]

LS: But they are not really natural; they are defective. They cannot even develop their reason properly. So they are as little natural as an embryo is natural, natural as an undeveloped human being. Therefore you cannot call this the natural state of man. That is true. Then you said something else which I also found interesting. You spoke of Locke's definition of all knowledge, of literally all knowledge, from sense perception. And then you raised the general question: How can there be any moral principles if the only source of all knowledge is sense perception? Is there a way out from this dilemma which is legitimate? Is it possible to build a moral teaching on the premise that all primary knowledge is sense perception, and therefore all primary moral knowledge?

Student: It would be a kind of hedonism.

LS: Not a kind, but a very massive one. Bodily pain and bodily pleasure are the fundamental moral data, and all moral teaching is simply a development of that, to get, for example, a maximum of such pleasures and a minimum of such pains. So in other words, there is a certainly intelligible connection between Locke's so-called sensualism and his hedonism. Now let us turn to a coherent discussion of today's assignment.

The plan of the third essay is very simple. First the problem is stated: Is the human mind primarily a *tabula rasa*, or does it contain by nature some practical propositions? Does man from the moment of his birth have certain practical propositions, or at least practical principles, stamped upon him, or is all knowledge literally acquired from sense perception? And then the bulk of the essay consists of five arguments, again disproving that there is anything innate, and in particular that there is an innate natural law. Now at the beginning of the essay (page 137),[iii] we will see that Locke raises here the enormous claim that he has already proven that there exists a natural law and that it is knowable by the light of nature. Now that has already allegedly been established, and of course nothing of the kind has been. In this discussion here (although that of course is not noticeable in the translation),[iv] Locke begins to speak of the soul; in Latin, *anima*. If you will go through the text, you will see (as far as my double-check has shown, at least, although this is not sufficient) that the word "soul" did not occur before. So the whole question of the soul comes up in the context of a notion of "imprinted" or, more generally stated, of a structured being. The soul, if we can call that soul which Locke admits, is no longer a structured being; it is a kind of board on which things impinge; it has no depth. And it is of some interest that he uses the term "soul" in this same context, and it also prepares a further problem to which we come later.

In the note on page 136, you see that Locke had originally a reference to Descartes, which he then deleted. That is of some importance for the understanding of the[1] essays [as a] [whole].

[ii] The term currently used (in the early twenty-first century) in English is "indigenous peoples."

[iii] John Locke, *Essays on the Law of Nature*, ed. W. von Leyden (Oxford: Oxford University Press, 1954).

[iv] This is not noticeable because von Leyden translates the Latin word, *anima*, as "mind." This is one example of the many problems with which von Leyden's translation, according to Strauss, is beset. Whereas the related word, *animus*, may indeed be translated as "mind," *anima* should be translated as "soul."

Locke knew Descartes by that time, of course, and there is even some proof that he accepted crucial things. The term "idea" in the Cartesian sense occurs at least twice in these essays. Later on, Locke made the remark, which I wrote on the flyleaf of my edition of the *Essay Concerning Human Understanding*: "I must always acknowledge to that justly admired gentleman [namely, Descartes—LS] the great obligation of my first deliverance from the unintelligible way of talking of the philosophy in use in the schools in his time."[v] So Descartes was the great deliverer.[2] This was settled, I'm sure, already by this time. But also, as becomes clear from this reference here, Locke rejects from the very beginning the characteristically Cartesian notion that there are innate ideas, and in particular the innate idea of god. So this structure, following the lead given by Descartes and yet deviating from Descartes in the direction of a consistent sensualism, seems to have already been settled by the fairly young Locke. And here the kinship with Hobbes is obvious. But this only in passing.

Now we can't go into all the arguments, but at the beginning of the second argument (page 137, last paragraph), you see that Locke misstates the issue completely. "If the law of nature were as a whole impressed on the soul by nature at the very birth . . . "[vi] Now of course no one had ever asserted that, except potentially, namely, that you can deduce from the principle. But here it seems to be implied that every child is born with a perfect [knowledge] and code of the law of nature, as he puts it. That is of course not the real issue. We have discussed that last time, that the real issue is the question of natural inclinations or the existence of natural inclinations, and not of a fully developed knowledge in any way. As was pointed out in the report, Locke indicates it is not possible to explain the factual ignorance of the natural law as a consequence of human guilt. You see that it is in contradiction to what we have seen last time. Locke states the issue as follows. The natural law is obligatory on man, on all men, always and perpetually, and yet most men are ignorant of the natural law. How is this possible? Is it not a cruelty to impose on men a law of which they are ignorant? Locke says that man's ignorance of the natural law is due to his guilt. Now one way of putting it is to say it was due to the Fall. Adam knew the natural law when he fell, and as a consequence of his fall men are now completely, or to some extent, ignorant of the natural law. What is Locke's argument regarding the Fall?

Student: Well, that argument doesn't hold, primarily because either some of the principles were effaced or they were all effaced—that is, the principles of natural law. But if only some were effaced, then why doesn't everyone agree on what was left? If they were all effaced, we have no natural law.

LS: Yes, that is what he specifically says. But now, if you connect his denial of the relevance of the Fall with this general problem, cannot one say that he here excludes the explanation of ignorance of the natural law by the Fall? And that aggravates the difficulty: if men are ignorant of the natural law, and if this is not guilty ignorance, what kind of ignorance can it be? That is the simple analytical proposition: innocent ignorance, ignorance imposed on man. And therefore you cannot speak of a universal obligation of the natural law. Do you see? If the natural law is to be discovered by reason, at least discovery takes place in the seventeenth century—all men prior to the seventeenth century are of course excused. That was individual ignorance. Do you see what generally is the way in which modern man tries to solve the

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[v] *The Works of John Locke in Nine Volumes*, 3:48. See Leo Strauss, *What Is Political Philosophy? And Other Studies* (Glencoe: Free Press, 1959), 199.

[vi] Strauss's translation.

problem? Which of course exists if you state it in general terms: the moral responsibility of man, if you don't want to state it in terms of the natural law. What about the moral responsibility of people engaged, say, in human sacrifice? Well, I'm not speaking now of what the social scientists say, because we know what they would say, but what morally concerned people would say, those who do not accept natural law. You see, that is what I think is one of the important differences between the understanding of morality in terms of natural law and the understanding of morality in terms of ideals. Now if morality as a whole has the character of an ideal and it is implied that not only is the realization of the ideal in the future, maybe in the infinite future, but even the knowledge of that ideal, then[3] there can be no question of guilt. Ideals are not obligatory, and that is one reason why they enjoy such a good press in modern times. Natural law is meant to be obligatory.

To come back to the immediate context in Locke: Locke rejects here one easy way out for him. Men are ignorant of the natural law and this ignorance is due to human guilt, the Fall. He rejects that, and that aggravates the problem. In the translation, by the way, there is no mention of Adam in the text, but of "the first man *or* his fall," and not "*and* his fall," as the translator says.[vii] Because Locke generalizes the problem. People could think of a first man without thinking of Adam, to say nothing of Adam's fall. I mention this only in passing, that it is really necessary to make such distinctions. Do you know of people who admitted a first man and no fall? You see, you must not forget what we today are apt to forget, that the idea of a first man is extremely hard: that means a man not generated by a human father and mother. We have become accustomed by Darwinism to take this in our stride, but it is really a very difficult problem. Now Aristotle of course solves this first problem in his way, which was very elegant, by indicating that there never was a first man—infinity. But there were people who said there were first men, apart from the biblical teaching where divine creation put the problem on an entirely different basis. There were philosophers who spoke of first men. We must never forget that.

Student: Wasn't there a mention of a first man in some of the Platonic myths?

LS: But then we don't know whether myth is . . . But the Epicureans—very[4] [simply], the Epicurean doctrine of causation. All those who deny the eternity of the visible universe admitted by implication a first man. That one must always keep in mind, and it is of some importance.

Now we turn to the central argument of this section. The more natural men are, Locke says, the less do they know of natural law. In this connection on the next page he gives a brief—[viii] . . . don't rest on natural law principles, and this unknown origin can be made clear by simple [. . .] of the body which, namely, the constitution of the body, alone is admittedly the difference between wise and foolish people. He completely misconstrues that; the translator simply didn't understand the sentence. Locke appeals here to two principles, two principles which create a difficulty. The first is [that] the mind is wholly independent[5] [from] the constitution and structure of the body. To what extent was this accepted, this view? Well, in the Aristotelian teaching, the mental acts are radically incorporeal acts. A mental act is a radically incorporeal act. But let me state it this way: the intellectual acts are as such incorporeal acts. Number two: The intellectual differences among men, between the wiser and[6] [less wise] people,[7] [are] not due to a difference of the intellect but to a difference of the

[vii] *Essays*, 139.
[viii] There is a break in the tape this point.

bodies. There is a passage in the *Summa* which I happened to note[8]. The subject of this question is whether one man can understand better than another man one and the same thing. And the answer is yes. And how does it come that some people are more intelligent than others? "It is manifest that the more perfect, the better disposed, the body is, the better soul it acquired."[ix] He speaks here of the difference between the species. The superiority of the human body to the body of the brute corresponds to the superiority of the human soul to the soul of the brute.

"The reason for that being because the [form][x] is received in the matter according to the capacity of the matter. And therefore, since among men, even among men, some have a better disposed body, they acquire a soul which has a greater virtue or power in understanding. And therefore, as is said in *De Anima*, we can see that those who have soft flesh have a better mind. And to some extent it comes from the power, the difference of the inferior virtues."[xi]

To state it differently, those who are crude timber and also mentally crude, and those who in body are delicate timber and also likely to be mentally delicate—it is better than "soft." But to come back to the Lockean argument. Locke agrees to two admitted principles: the noncorporeal character of the intellect as intellect, and the fact that there are intellectual differences among men which, to some extent at least, cannot be explained except by a crucial influence of the body on the intellect. That, I think, is the presupposition of the argument he has stated. How would you solve this difficulty? How can the noncorporeality of the intellect *qua* intellect coexist with a dependence of the power of the intellect in human individuals on certain bodily differences?

Student: Well, its dependence on the body for the type of image which it receives. If there is something defective with sense perception, then there is no possibility that the intellect will have accurate idea because the ideas are always from sense perception. But once the image is obtained, and presuming that it is accurate according to these senses, then the proper acting of the reason is independent from that point on.

LS: That is not sufficient, I believe. That would explain such states as color-blindness and other things, but the other qualities, e.g., quickness of mind, could be equally possessed by a normal man and a colorblind man. And that has nothing to do with the perfection of the senses as senses. In Aristotle's opinion, which Thomas here adopts, there must be some connection between that and, not perfection of the senses but[9] the whole bodily constitution, what here he calls the delicacy of the whole organism. At any rate, I think Locke refers here—there is no question that this is the meaning of what Locke says, that I translated it correctly—to what amounts to a real absurdity. Of course he tries to reduce the traditional view to absurdity. He says: From these admitted principles it follows that the idiot must have perfect knowledge of the natural law, because the natural law is intellectually perceived. The natural law is purely intellectual and, as the difference between idiots and nonidiots is

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[ix] Aquinas, *Summa Theologica* I, q. 85, art. 7. This appears to be Strauss's own translation of Aquinas's Latin: "*Manifestum est enim quod quanto corpus est melius dispositum, tanto meliorem sortitur animam*…"

[x] Lacuna in transcript; "form" supplied by editor.

[xi] Aquinas, Summa I, q. 85, art. 7. This appears to be Strauss's translation of Aquinas: "*Cuius ratio est, quia actus et forma recipitur in materia secundum materiae capacitatem. Unde cum etiam in hominibus quidam habeant corpus melius dispositum, sortiuntur animam maioris virtutis in intelligendo, unde dicitur in II de anima quod molles carne bene aptos mente videmus. Alio modo contingit hoc ex parte inferiorum virtutum . . .* " Cf. Aristotle, *De Anima* 2.9, 421a25-26.

entirely dependent on corporeal, bodily distinctions; *ergo*, idiots would have to have complete knowledge of the natural law. Of course no one ever suggested this.

Student: Must we take the terms "foolish" and "insane," or "foolish" and "*mente capti*," as only referring to natural defects?[xii]

LS: I would say that. Incidentally, in the last line he takes together *stulti et mente capti*. *Stulti* would mean the fools, those he called in his English words the "naturals," meaning natural fools. But we don't speak anymore of "naturals." But in the seventeenth century on the other hand, it was very common to speak of naturals. The naturals and *mente capti* are the insane. Of course, they would according to the traditional view have no knowledge of the natural law. From Locke's point of view, they would have to have it, if the natural law is implanted. Well, I can't say more about this difficult passage, which may contain more in it than I have been able to see. Let us turn to the fourth essay, which is in a way the most important, because here alone does Locke prove—or show, rather, how the natural law is known or knowable, whereas both essays 3 and 5 show how the natural law cannot be known. It cannot be known by imprintedness and it cannot be known by consensus, by universal consent. The only way in which it can be known is discussed in this chapter, in this essay.

Now the plan is this. First, the natural law is to be knowable by the light of nature. Number one: What is the light of nature? This is on the first two pages[10].[xiii] Then, second: How can the natural law be known by the light of nature? The light of nature proves to consist of two elements: the senses and reason. And therefore, first, what do we learn from the senses[11]?[xiv] And the rest of the essay: What do we learn from reason?[xv] This is the plan of this essay. Now let us first see how the argument runs. You see again that at the beginning of the essay Locke makes the bold assertion: "We have proved above that the natural law or the law of nature is knowable by the light of nature."[xvi] Such a proof has not been given; only some conditions of that knowability have been stated. Now read the next sentence.[xvii]

Reader:
by the light of nature, which, indeed, is our only guide when we are entering the course of this life, and which, amid the various intricacies of duty, avoiding the rough roads of vice on one side and the by-ways of error on the other, leads us to that height of virtue and felicity whereto the gods invite and nature also tends.[xviii]

LS: So here the natural light is said to lead us to the peak of virtue and happiness. What does this imply? The natural light, the light belonging to man as man, is sufficient to lead man to virtue and happiness. If this is stated without any qualification and is the last word, what would it imply?

Student: Not very much dependence on god.

[xii] *Essays*, 142/143.
[xiii] *Essays*, 147-51.
[xiv] *Essays*, 151.
[xv] *Essays*, 153ff.
[xvi] *Essays*, 147. Strauss alters the translation. The original Latin is as follows: "*Legem naturae lumine naturae cognoscibilem supra probavimus*."
[xvii] Von Leyden alters Locke's punctuation. The first sentence in his English translation is in fact two sentences in Locke's Latin.
[xviii] *Essays*, 147.

LS: Well, more precisely: If that is true, there is no need for revelation. But we must see whether Locke leaves it at that. And you see on the same page, the sequel, where he says: "There is nothing so obscure, so hidden, so remote from all sense."[12] [The translator] says "removed from any meaning."[13] I believe it means simply "sense," namely, sense perception, which the mind cannot reach. Now that would mean, if understood correctly, [that] man's natural faculties are sufficient for the understanding of everything. That goes together with the first statement. Man is by nature self-sufficient in regard to knowledge and to happiness. Now what then is the precise character of that natural light by virtue of which man can know everything and reach happiness?

Now he makes clear on the next page[14] that reason is not a faculty which perceives in any way.[xix] Reason is purely discursive; it works on materials given to reason. There is no other source of knowledge than sense perception. There are no principles of knowledge which are awakened by sense perception perhaps, but are not derived from sense perception. Therefore there are also, in particular, no principles. All principles which men have—theoretical or practical, the principle of contradiction or the natural law—are absolutely derivative from sense perception. Is this point clear? Because that is decisive for the argument which Locke makes. All our knowledge is derivative from sense perception. And here Locke does not make a distinction which he makes later on between perception by the external senses, e.g., sight, hearing, and what he calls later on reflection. For example, if you perceive the difference between will and desire by reflecting on the act of your mind, that he calls later on reflection, which he regards as equally fundamental as sense perception proper. This distinction is not made. Every knowledge is derivative from sense perception proper. There are no innate principles in any sense. But reason works on them. This working of reason was described in today's paper in Kantian rather than Lockean terms, but perhaps that is permissible in the present context. What precisely does reason do with the sense data? Well, I suppose Locke would say: Generalizes. It generalizes and then it draws inferences from what it has generalized. We have certain sense impressions, and we interpret them to mean the sun shines. Then we see, whenever this happens other sense perceptions occur, namely, things are visible without lamps, and so on; and therefore we say the sun is lighting up, it makes things visible. This is an act of reason when I say that, but that is absolutely based on the sense perception which I have of the sun and of other things.

Then on page 151[15], he says twice that two conditions must be fulfilled if any law, and hence in particular the natural law, is to be known as law. In the first place, we must know that there exists a legislator, i.e., some superior power to whom we are rightly subject; and the second thing we have to know is the will of that superior power as to what we ought to do. It is not sufficient to prove, in other words, the existence of god as the superior power to which we are subject. It is also necessary to prove that god's will is knowable by us, by natural reason. That is important for the following reasons. When he speaks here of the will of god, he means of course a will which man can disobey. Otherwise there would not be a natural law in the sense of the moral law. You remember the distinction which we made last time between a law which man can transgress and a law which he cannot transgress. For the kind of law which man cannot transgress, knowledge of the will of god in the sense here meant is not necessary. Take the example of digestion. The laws regulating digestion can be known without knowing the will of god regarding the things to be done by us. Why? Digestion is not a thing to be done by us. That takes place by itself. So Locke has of course here in mind when he speaks of

[xix] *Essays*, 149.

the will of god, the will of god regarding things which are expected of man, and therefore which man does not necessarily do, [but] which he *may* do. Locke states in the sequel[16] what we know by the senses. And we see [that] by the senses we know only bodies and their qualities, and especially motion. And here there is no reference of course to any demonstration of the existence of god, unless you think this reference, "this visible world which has been constructed by marvelous art and order,"[xx] is it.[17] So the distinction between sense perception and reason is not clearly drawn, although Locke claims to have drawn it clearly.

Now we turn to the argument on the next page. We make an inference from what is known to us by sense perception, and the conclusion of that inference is that this visible world must have a powerful and wise artificer—the term he uses here. That is the first condition of the possibility of a natural law. Now here there is a very strange argument which he did not discuss. He states at the beginning,[18] this world "could not have come into being by chance and fortuitously," and "there must be such a powerful and wise artificer who has made this whole world and us men, who are by no means the lowest part in the world." And then he branches off from this point, for he speaks only of man and no longer of the visible universe as a whole, of which man is a part.[xxi] And he raises the question: Could man have been made by anything but by god? And he makes here a distinction. Could he have been made by brutes? Answer: No. But could he have been made by man? That he discusses at some length. Do you remember what the argument is? Let us read it.

Reader:
Nor, on the other hand, can man create himself; for that we do not owe our origin to ourselves is surely undisputed, not merely for the reason that nothing is its own cause—for obviously this axiom does not prevent us, if we are willing to acknowledge god, from believing that something exists which does not depend on another—[xxii]

LS: I mention here only in passing that Locke in the same breath denies that anything can be its own cause and asserts it. But let us go on.

Reader:
but also because man does not find in himself all those perfections which he can conceive in his mind. For (omitting perfect knowledge of all things and a greater authority over things in nature) if man were the maker of himself, able to give himself being, who brought himself forth into the world of nature[xxiii] would also give himself an existence of everlasting duration. For it cannot be conceived that anything will be so unfriendly, so hostile to itself that, while able to bestow existence on itself, it would not at that same time preserve it, or would willingly let it go, when a little life's brief course had ended; for without it all other precious, useful, agreeable, and blessed things cannot be retained and are sought for in vain. Certainly it requires a lesser power to preserve something than to create it, or at any rate only the same

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[xx] *Essays*, 151. Strauss alters the translation. The Latin reads: "*Esse mundum hunc visibilem mira arte et ordine constructum*."
[xxi] *Essays*, 153. Strauss alters the translation. The Latin reads: "*cum certo constet id casu et fortuito in tam justam tam undique perfectam affabreque factam compagem coalescere non potuisse: unde certe colligitur oportere esse potentem sapientemque harum rerum omnium opificem qui totum hunc fecit fabricavitque mundum et nos homines, non infimam in eo partem . . .* "
[xxii] *Essays*, 153.
[xxiii] In the original: "then he who could bring himself forth into the world of nature"

power, and whoever at any moment has ordered something to come into being, he can effect that it does not cease to exist at some other moment.[xxiv]

LS: Well, what is the burden of the argument? Why cannot man create himself?

Student: He suggests that he could have done better by himself.

LS: Sure, but more precisely. Why has man not created himself?

Student: He did not give himself everlasting life.

LS: Immortal. He did not make himself deathless, to be more precise. Man is not deathless. That is the presupposition of the argument. Who created man according to Locke's teaching if man didn't do it himself?

Student: The creator.

LS: But what light does it throw on creation, this argument?

Student: It demonstrates that god is immortal.

LS: Yes, but that is not here stated, and I think also not implied.

Student: It would suggest that god's creation is imperfect.

LS: That is a gross understatement, but true. In other words, the creator of man, or the maker of man, is an enemy of man—nothing short of that. Only a being inimical to man would have created man, a being which can be aware of death, a dying or a mortal being. You see, that is one point where I believe that the demonstration is not so valid from Locke's own point of view, because when Locke proves the existence of god, he claims to prove the existence of a powerful and wise and, I would assume, also a kind being. And here? That's the difficulty. That, by the way, is not the only reference to this problem. I mention only on[19] page 124, bottom, when he says knowledge by implanted principles would be an easy and convenient way of knowing the natural law, and that this would be due to a kindness of nature. Now if Locke denies that there are implanted principles, he denies the kindness of nature and therefore, if god is the creator of nature, the kindness of god. It is the same argument.

You see that it is an absolutely shocking statement, but it is not surprising. Why not? Let us look at Hobbes's doctrine for one moment, where all these things are very clear. What is the natural condition of man, according to Hobbes?

Student: The war of all against all.

LS: The natural condition, the condition in which man is prior to any doings of his own. Nature has, as he puts it, disassociated man, which means nature has established enmity among men so that they are enemies of each other. Now in Hobbes, if Hobbes would have used theological language there, he would have used exactly the same expression. Therefore it is by no means surprising. There was a contemporary of Locke, with whom he was later on

[xxiv] *Essays*, 153.

in contact, if I remember well, whose name was Pierre Bayle.[xxv] Now Bayle is famous in all textbooks for one assertion: that the Manicheans were right, philosophically speaking. What does that cryptic or learned statement mean in plain English? The Manicheans were people who said there are two opposed principles, a good and an evil principle. And Bayle said, if you analyze the world in its natural constitution, not in its . . . state, you find that this world is the work, at least partly, of an evil principle, of an enemy of mankind. You see, we don't recognize this. These people who speak so easily of man's conquest of nature or control of nature—these terms with which we are so familiar—but if you think them through for a moment, what do they imply? Nature has to be conquered. You conquer an enemy; you don't conquer a friend. If the theological thesis is maintained—nature being the creation of god—it means, of course, god has put man into a surrounding which is inimical to man. I know of course that you can deduce the idea of the conquest of nature also from the biblical command that men should rule all brutes or all beasts lower than man, but that would not be conquest. The idea of conquest implies war; it implies hostility.

So a certain notion of man *against* everything else and man by nature exposed without any cosmic support is really underlying this modern way of thinking. And we should not be surprised to find such a statement in Locke here. Locke criticizes the notion of the beneficence of nature also in the *Essay Concerning Human Understanding*.[20] Everything is due to man. Later on, when we come to the *Treatises of Civil Government*[xxvi] and the chapter on property, what is the main point? Nature gives us nothing. The world lends materials; everything of any value is due to human labor. Human labor transforms the worthless into the valuable. One could even show the same principle active in Locke's doctrine of knowledge, and given a theological expression of this thought, one will arrive at something of this kind. In all this discussion here—and I mention this only in passing, although I believe it does come out in the translation—Locke never speaks of god's omniscience and omnipotence. He only speaks of powerful and wise, or more powerful and more wise than we are, and so on. This is also an indication of the problem, because later on, in the chapters not devoted to the demonstration, he speaks of creation out of nothing, which implies omnipotence. But here in the crucial context where he claims to speak in precise language, he never speaks of omnipotence, omniscience, or creation out of nothing. This is also a point which I thought one should mention.

On the next page[21] he makes a reference which is not unimportant to the difference between body and soul: "And since He has Himself created the soul and constructed the body with wonderful art, and has thoroughly explored the faculties and powers of each, as well as their hidden constitution and nature, He can fill and stir the one with sorrow or delight, the other with pain or pleasure; He also can lift both together to a condition of the utmost happiness or thrust them down to a state of misery and torment."[xxvii]

You see, by the way, that he does not speak of an extreme misery and punishment, but only of misery and punishment. This is not uninteresting, considering the importance the discussion of eternal punishment had at the time. But more important is the point: god can fill

[xxv] Pierre Bayle (1647-1706), French philosopher, an almost exact contemporary of Locke's. Known for his advocacy of religious toleration, Bayle was widely suspected of religious skepticism as well. He was the author of a number of works including *Pensées diverses sur la comète de 1680* (1682) and the massive *Dictionnaire Historique et Critique* (1697).

[xxvi] That is, the *Two Treatises*.

[xxvii] *Essays*, 155.

or stir the soul with sorrow or joy and the body with pain or pleasure. Can we say, strictly speaking, that the body has pain or pleasure? I mean, if you have a bodily pain, say, a toothache, what feels the pain? Strictly speaking, the soul, not the body, pain and pleasure being mental, acts of the mind and/or of the soul. But in a looser way of course we call pleasures of the body or pleasures of the soul pleasures which are connected with the body and the soul, but this is not strictly speaking. Now I find later on, in the *Essay Concerning Human Understanding*, the fourth part, chapter 3, a passage which created an uproar when it was published and throughout the eighteenth century. Locke raises here this question: Could god not have made that matter think? The problem was stated generally by Descartes, and with a long prehistory: Matter cannot possibly think. Thinking requires a different substance, the soul or whatever you call it. Now Locke asserts here [that] we are so ignorant of the true nature of both soul and matter that we cannot possibly say that matter could not be made to think by God. And in this connection he says: "What certainty of knowledge can anyone have that some perception, such as, for example, pleasure and pain should not be in some bodies themselves after a certain manner modified and moved [in other words, not in a stone—LS] as well as that there should be in an immaterial substance, upon the motion of the part of the body."[xxviii] In other words, the ascription of pleasure and pain to the body is in the *Essay Concerning Human Understanding* linked up with the materialistic interpretation of everything. And I regard it at least as possible that this is foreshadowed in our remark here.

Let us take another point on the same page. "Hence it appears clearly that, with sense-perception showing the way, reason can lead us to the knowledge of a law-maker or of some superior power to which we are necessarily subject. And this was the first thing needed for the knowledge of any law. Certainly I grant that some have undertaken to prove from the testimony of conscience that there is a Deity presiding over this world; others have done so from the idea of God, regarded as innate in us, either of which ways of argument would certainly prove that God exists, even if (and this will perhaps become clear to anyone considering the case more carefully) the argument of neither method derives its whole force from our inborn faculties, i.e. from sense-perception and reason."[xxix]

Now what does Locke say here? He refers here to two other arguments which he did not use: the argument from the conscience and the argument from the innate idea of God. What does he say[22] about this argument?

Student: . . .

LS: In what sentence? Let us be precise. Where does he say that they are valid?

Student: . . .

LS: That would seem to be an admission of their validity. But if you look at the note of the editor[23], he says, *si*—which is the Latin word for if—"appears redundant."[xxx] In other words, Locke's admission that these arguments are good is based on the omission of the word "if."

[xxviii] *Essay Concerning Human Understanding*, 4.3.6 (Nidditch, 54). In the original: "What certainty of knowledge can any one have, that some perceptions, such as, e.g., pleasure and pain, should not be in some bodies themselves, after a certain manner modified and moved, as well as that they should be in an immaterial substance, upon the motion of the parts of body?"

[xxix] *Essays*, 155.

[xxx] *Essays*, 154n2.

Now *if* they prove, which of course makes that amount to a [conditional][xxxi] I admit that if one reads that *si* as "if," the sentence becomes practically unintelligible. I admit that. But still we cannot say, as the editor says very beautifully and paying a great homage to logic, Locke "allows the cogency of two of the other arguments but . . . he remarks that their authority is not based on reason and sensation alone and in fact presupposes this *a priori* notion which it is difficult to accept."[xxxii] Now please. Can arguments be cogent if they presuppose notions which it is difficult to accept? The editor simply reproduces Locke's absurdities, which is less than an editor or an interpreter should do. But it is a typically Lockean procedure. Later on he does this. He discusses a certain argument about the existence of god in the *Essay Concerning Human Understanding* and indicates vaguely that he does not regard this as a good argument. And then he was attacked because of this vagueness and he said: Well, he did not want to hurt people who believed in god on the basis of this argument. In other words, he regarded himself as a kind of super-educator. He lets people believe in god on the basis of a wrong argument, and [he does] the same[24] here. But he makes it perfectly clear in the sequel, by the way, that the arguments are of no validity. But that only in passing as regards the method of Locke's writing.

Now let me see. Well, Locke at any rate claims to have established the existence of god. And then the question arises: How can we know the will of god? Answer: The will of course appears from his work. Now if we read that on page 157.

Reader:
what it is that is to be done by us can be partly gathered from the end in view for all things.[xxxiii]

LS: Why does he say "end in view"? Because it is only the end. Could this be due to the influence of Dewey, or someone like him at any rate? At any rate, "the end of all things."

Reader:
For since these derive their origin from a gracious divine purpose and are the work of a most perfect and wise maker, they appear to be intended by Him for no other end than His own glory, and to this all things must be related. Partly also we can infer the principle and a definite rule of our duty from man's own constitution and the faculties with which he is equipped.[xxxiv]

LS: Here in the sequel Locke reproduces, with characteristic changes, this Thomistic view. Man has a natural constitution, and this natural constitution points to man's duty. Now let us see what he says about that.

Reader:
For since man is neither made without design nor endowed to no purpose with these faculties which both can and must be employed, his function appears to be that which nature has

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[xxxi] In the original transcript: "inaudible"; "conditional" has been supplied by the editor.
[xxxii] *Essays*, Introduction, 49. Strauss slightly alters the translation. Von Leyden writes: "He allows the cogency of two of the other arguments, namely the one from conscience and the one from the innate idea of God, but he remarks that their authority is not based on reason and sensation alone and, in fact, presupposes *a priori* notions which it is difficult to accept."
[xxxiii] *Essays*, 157. In the original transcript the quotation is abridged.
[xxxiv] *Essays*, 157. In the original transcript the quotation is abridged. The final three words ("because man is") are here deleted; these appear to be an anticipation of the next quotation.

prepared him to perform. That is to say, when he in himself finds sense-experience and reason, he feels himself disposed and ready to contemplate God's works and that wisdom and power of His which they display, and thereupon to assign and render praise, honour, and glory most worthy of so great and so beneficent a creator.[xxxv]

LS: I note one thing, that there are two reasonings: first, from the end of all things; and second, from the constitution of man. From the end of all things and the first argument taken from man's natural constitution point to religion as a duty of natural law, if we understand by religion the knowledge and the praise of God, the worship of God. That is perfectly clear, the great and strong emphasis on this point. Now go on.

Reader:
Further, he feels himself not only to be impelled by life's experience and pressing needs to procure and preserve a life in society with other men, but also to be urged to enter into society by a certain propensity of nature, and to be prepared for the maintenance of society by the gift of speech and through the intercourse of language, in fact as much as he is obliged to preserve himself. But since man is very much urged on to this part of his duty by an inward instinct, and nobody can be found who does not care for himself or who disowns himself, and all direct perhaps more attention to this point than is necessary—[xxxvi]

LS: Let us stop here for a moment. You will notice that Locke never uses here the expression "natural inclination." When he speaks of man's social character, he speaks of a propensity of nature. He avoids the term "natural inclination." He speaks of an inner instinct only in the case of self-preservation. Now let us read the last sentence.

Reader:
But there will be room perhaps elsewhere to discuss one by one these three subjects which embrace all that men owe to God, their neighbour, and themselves.[xxxvii]

LS: Well, which are the duties . . . toward god, that is clear: knowledge and worship. And toward the neighbor. What is the root of the duty toward oneself?

Student: One of the roots is this self-preservation.

LS: The only root. Because the root of the duty toward god is the first, the inclination—if we use this term, which he does not use—toward knowledge and honor of god. The root of duties toward our neighbors is our social propensity. The root of duty toward ourselves is the desire for self-preservation. Well, that sounded strange to men, because what are the duties toward ourselves? I mean, within which limits do they remain or how far do they extend? Father Buckley,[xxxviii] I must always call on you because you must know these things best. I do not remember a reference in the *Summa* to duties toward ourselves, but that is probably my ignorance of that.

Student: . . . There is a constant stress on acting according to reason, in the sense of a development of the reason. Each one has the duty to develop his reason.

[xxxv] *Essays*, 157. In the original transcript the quotation is abridged.
[xxxvi] *Essays*, 157-59. In the original transcript the quotation is abridged.
[xxxvii] *Essays*, 159. In the original transcript the quotation is abridged.
[xxxviii] Father Buckley was a Catholic priest who took a number of courses with Strauss.

LS: Well, I looked up some more recent writers, later than Locke, and they take for granted that everything he called self-respect and concern with man's dignity in oneself is part of the duty toward oneself. In other words, not mere deference. Locke has, it seems, a very narrow view of the duties toward oneself. Mr. ____?

Student: The editor has a footnote here referring man's preservation of himself to the *Summa Theologica*.[xxxix]

LS: Yes, sure. There is a well-known passage which you know, of course, but there is not a word about duties toward oneself. These three [natural inclinations].[xl] In other words, there is the subhuman element which man shares with all living beings: self-preservation. Then there is something which has to do with his nature as a social[25] [being], and then with his rational nature. That is underlying the Thomistic tripartition. That tripartition has nothing to do with these three kinds of duties. I really don't know where it stems from; it is not in Cicero, for example. Where this distinction of the three kinds of duties stems from, I don't really know. At any rate, Locke seems to have a very narrow notion of the duty toward oneself, namely, derivative from self-preservation strictly understood. And I note that only self-preservation is here called an internal instinct. In the case of the social direction, he speaks of some propensity of nature, which can mean almost anything, which can mean a propensity derivative from man's sense of weakness if he is not allied with other . . . It does not necessarily mean more.

Now let us turn to the next and last essay we have to discuss today. The plan is also clear on the whole. The subject is "Can the Natural Law be Known from the Consensus of Man?" First a general statement showing the inadequacy of the voice of the people or general consent, the first paragraph. Then Locke discusses what he calls positive consensus, meaning a consensus based on pacts,[xli] and then he discusses natural consensus. The natural consensus is subdivided: natural consensus of actions (pages 164 to 167) and natural consensus of opinion, and that is the largest part (167 to 179). And this is subdivided into two parts: (a) there is no consensus of opinions, and (b) even if there were consensus of opinions regarding right and wrong, it would [not] prove natural law.[xlii] And the last section deals with the denial of natural consensus regarding principles. That is a very brief last paragraph.

Now the first point which we note is this. At the beginning—can you read that sentence?

Reader:
For is there anything so abominable, so wicked, so contrary to all right and law, which the general consent, or rather the conspiracy, of a senseless crowd would not at some time advocate? Hence we have heard of the plunder of divine temples, the obstinacy of insolence and immorality, the violation of laws, and the overthrow of kingdoms.[xliii]

LS: Let us leave it at that. There is something wrong in the translation. "The plunder of temples of God." "Divine temples" is ambiguous. Let us consider that. What does it mean here? What follows from the plunder of temples of gods? What does this bespeak, as stated

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[xxxix] *Essays*, 159n1, referring to *Summa* I-II, q. 94, art. 2.
[xl] The transcript has ellipses.
[xli] *Essays*, 161-63.
[xlii] *Essays*, 167-77 and 177-79, respectively. In the original transcript: "it would prove [sic] natural law."
[xliii] *Essays*, 161. In the original transcript the quotation is abridged.

here? The plundering of the temples of the gods is a crime against law, against right, and in the context even against natural law. There is another passage to the same effect somewhat later. But in order to understand that, let us turn to a somewhat later remark on page 167,[26] [sixth line from the] bottom.

Reader:
All this, I repeat, I shall pass over, because we must believe that religion becomes known to men not so much by the light of nature as by divine revelation.[xliv]

LS: That's all. Now what does this mean? If it becomes known rather by revelation than by the light of reason, what follows from that?

Student: I don't know whether this is what you are getting at, but god becomes known by reason.

LS: However, there is a difficulty. If natural law as previously described contains primarily, chiefly, most importantly, duties toward God, how can this be said, that religion becomes less known by the light of nature than by divine revelation? It is only another way of putting it: How can acts against the temples of gods be used as an example of criminality proper, if polytheism is fundamentally wicked and a crime against the natural law? There is another passage later on to this effect[27], where he speaks of the complete absence of agreement regarding natural law: "For others there is no disgrace in debauchery; and while in one place there are no temples or altars of the gods, in another they are found spattered with human blood."[xlv] Here there are no temples of gods, or their altars [are] spattered with human blood. The absence of temples of gods is here taken as much a sign of action against the natural law as inchastity, theft, and other crimes. That is a very great point, because if the natural law as described up to now, including essay 5, includes as its most important and primary part duties toward God, i.e., toward the one God, what is the status of polytheism? Polytheism is a most terrible crime? As terrible as atheism? And here, with what right can[28] Locke take these examples of crimes committed against idolatrous practices? Can he use them as examples comparable to theft, murder, and so on? Do you see the difficulty? We can perhaps develop this later a bit more fully.

Now let us turn to the big issue. All consent stems either from a pact or is natural. The pact may be tacit, namely, insofar as men's need and advantage advises a certain course of action, such as the free intercourse of ambassadors, free trade, and other things of this kind, or by an express pact. Now Locke discusses first the tacit pact. The express pact is not interesting. As to the tacit pact, he tries to show that whatever is based on a tacit pact cannot be a prescription of natural law in itself, for otherwise it would not need a pact. And he discusses one example, and that example is which? The reception of ambassadors. In other words, that ambassadors are accepted peacefully and not treated as enemies, killed, and so on. Who made that a natural law? Well, that is one of the natural laws in Hobbes. The fundamental natural law being to seek peace, anything typically conducive to peace, such as the exchange of ambassadors, would of course be a prescription of natural law. Now Locke denies that this is a natural law, as you have heard. But the most important point, perhaps, in this connection is

[xliv] *Essays*, 167. In the original transcript the quotation is abridged.
[xlv] *Essays*, 191. In the original transcript the quotation is abridged.

a remark which occurs here: "The natural law does not suppose that men are divided into hostile states; the natural law does not permit that even."[xlvi]

The natural law does not suppose that men are divided into hostile states. You quoted that. Now what is the consequence of that? The natural law does not permit that men are divided into hostile states. What is the traditional teaching about that? Well, what about war? If the natural law does not permit such a division, the natural law does not permit war. What was the traditional view about that?

Student: That there are just wars.

LS: *Ergo*, about war, natural law permits war. What is the consequence of Locke's assertion, which of course is not supported by any reasoning of Locke's? But let us see, in order to understand the possible reasoning, what is the consequence of that. If the natural law does not permit hostile states, states hostile to each other, what follows from that?

Student: Natural law would seem to dictate arrangements which would [render] war [impossible].

LS: But there is no suggestion of this nature anywhere here or later in the *Treatise of Government*. What would follow?

Student: It wouldn't be natural to defend yourself.

LS: No, I would state it this way: the absolute inapplicability of the natural law to the life and activity of states, because the possibility of [war].[xlvii] And it has some other implications which we may perhaps see later.

Now let me see. We don't have to read all of it, but the end is only very important. This agreement to treat ambassadors in a friendly spirit, or to receive them in a friendly spirit, what does he say about that? "The whole consent based on pact does not prove the law of nature but is rather to be called *jus gentium*, law of nations; and that is not something commanded by the law of nature but persuaded by common utility."[xlviii]

And this point was properly raised and stressed in today's report. The alternative natural law doctrine which appears from the pages of Locke would be one which is derivative from the common utility of men as a wise suggestion, as distinguished from strictly speaking obligatory law. We will come to that when we come to the last essay. Locke tries to show, first, that the actions or actual manners of men show no consent whatsoever. And here it is especially important what he says on page 167, top, where he denies that men who act against the natural law feel any pangs of the conscience. These people, [and not only criminal individuals but whole nations], act against the natural law[29]without any feeling that they do wrong, or without any pangs of conscience. But then he goes on to say: Granted that men act contrary to the natural law, that does not necessarily prove that there is no natural law or that

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[xlvi] *Essays*, 162/163. Strauss's translation. The term "natural law" is implied here. The Latin reads "*cum lex illa . . . in hostiles civitates divisos nec supponit nec permittit . . .* "

[xlvii] The transcript has ellipses and "inaudible."

[xlviii] *Essays*, 163. Strauss's translation. The Latin reads: "*totus ex pacto consensus legem naturae non probat, sed potius jus gentium dicendus est quod lex naturae non jussit sed communis utilitas persuasit hominibus*."

there is no consensus. There could very well be consensus regarding right and wrong, although many men and nations act against right and wrong, obviously. The fact that a man steals—he does not deny that theft is forbidden, and the same would apply to the natural law as well. And therefore Locke tries to show that the opinions of man regarding right and wrong are in total disagreement in every point. We don't have to read all these examples; rather, we cannot read them. The most interesting one is the last[30], where Locke takes up the question of self-preservation and says even this fundamental law, which some people declare to be the primary and fundamental law of nature, and where there is a natural instinct driving man to that, even that is disregarded. And the greatest proof he gives that not only males but even females disregard that, the great example being the widows in India who ascend gladly the funeral pyre, completely disregarding their self-preservation, so strong is the power of opinion even against natural inclination.[xlix] How Locke can reconcile this fact of the Indian widows with the position he assigns to self-preservation later on in the *Essays*, we may take up when we come to that. May I mention this now? A very fundamental point in the *Treatise of Civil Government* is this instinct or desire for self-preservation as *the* basis. What will he do later on with that Indian widow? There are other examples, of course; there are even other kinds of suicide: sometimes heroic people who don't fear death, and so on. But how would he reconcile that? Let us discuss that next time when we come to a discussion of the last essay about private utility as an inadequate foundation of natural law. But the most interesting point which we find here is in the next paragraph. Will you read that?

Reader:
It would be tedious to describe further instances. Nor is it surprising that men think so differently about what is right and good, since they differ even in the matter of first principles, and doubt is thrown upon God and the immortality of souls. Even if God and the soul's immortality are not moral propositions—

LS: "practical propositions."

Reader:
and laws of nature, nevertheless they must be necessarily presupposed if natural law is to exist. For there is no law without a law-maker, and law is to no purpose without punishment.[l]

LS: In other words, Locke enlarges now the whole issue. The existence of god does not suffice, and god having indicated his will by his creation. It is also necessary to make the immortality of the soul a principle, because there is no law without punishment for the transgressor. Why does he speak of the immortality of the soul, even if we grant the principle, *no law without punishment*? What does that imply?

Student: [. . .]

LS: Locke would say the greatest robbers in the world escape. In other words, if someone makes himself a tyrant, he controls the courts—[li] . . . but to see how shocking this thing is, turn to page 179, the last paragraph, and don't forget what we just read.

[xlix] *Essays*, 173.
[l] *Essays*, 173. In the original transcript the quotation is abridged. The words "practical propositions" are assumed to be an interruption by Strauss in order to correct Von Leyden's translation of *propositiones practicae*.
[li] There is a break in the tape at this point.

Reader:
Lastly, it is not necessary for me to say much about the third kind of general consent, i.e. agreement in first principles, because speculative principles do not pertain to the matter under discussion and do not affect moral facts in any respect whatever. From what has been said above, however, it is easy to gather what is the nature of the general consent of men with regard to practical principles.[lii]

LS: What do you say to that? Speculative principles do not affect moral affairs in any way whatever. What did he say there?

Student: [. . .]

LS: He doesn't go so far as to call them explicitly speculative principles, but[31] [they] are speculative principles because he says that[32] [they] are principles and they are not practical propositions; hence they must be speculative principles. Moral law does not need—the natural law does not need theoretical principles of any kind, and it needs theoretical principles of any kind. Make your choice. But you can't have both. And that is a very grave thing and throws a sinister light on everything he did in this part of the book. Or[33] is there a way to save Locke from the charge of gross self-contradiction, if intentional self-contradiction?

Student: By changing the issue from one of the existence of the natural law to the belief that it exists and is well known.

LS: But what kind of principles would they be? Would they be principles if they are derivative?

Student: It is the assumption of a self-evident proposition.[34] [On page] 149 Locke says: "In fact, at all times every argumentation proceeds from what is known and taken for granted, and the mind cannot discourse or reason without some truth that is given and perceived."[liii] He assumed he was going to be granted these things.[liv]

LS: Surely. But Locke says much more than that. He says that all these granted things . . . are eventually traced to what? Sense perception. So "self-evidence," if we use that word, can only be sense perception: everything else is derivative. Later on he changed his doctrine about that, in the fourth part of the *Essay Concerning Human Understanding*—I can't go into that now—but here there is not a trace of that. He says the existence of god must be demonstrated, and he gives a sketch of such a demonstration. In a way, the existence of god is the principle, namely, after having been established, it is the starting point. This then is the principle of natural law. And of course as such it would be a speculative proposition, a theoretical proposition, as Locke says here, because he says, "no practical proposition," and that means a theoretical proposition or speculative proposition. So natural law depends on speculative propositions. But what does he say later? Speculative principles do not affect moral things at all. Now if you want to, you could say: The speculative proposition, like the existence of god, is not a speculative principle. But could you get away with that? What is the highest speculative principle, according to Locke here? The principle of contradiction. It is

[lii] *Essays*, 179. The transcriber notes: "paragraph read." Text supplied by editor.
[liii] *Essays*, 149. In the original transcript the quotation is abridged.
[liv] The transcriber notes that this and the two preceding speeches represent the substance of a largely inaudible dialogue.

impossible to establish *any* proof, including the proof of the existence of god, without making use of the principle of contradiction. Therefore, if there is to be a complete independence of moral things in regard to speculative principles, it means of course there is also complete independence of moral things regarding the speculative propositions. I think the contradiction is really there and is of crucial importance.

A few more points. On the next page (175) he speaks of polytheism again; and he says very emphatically that the polytheists are atheist, and that means that a considerable part of mankind contradicts the first and most important law of nature. I will mention only this point here. First he speaks of these savages. And then he says: If you approach or if you appeal to the more polished nations or philosophers of a saner mind, you won't derive any advantage from that, since to the Jews all other nations are heathens and not sanctified, and to the Greeks all other nations are barbarians. What does this mean in this context? What do the Jewish position toward the gentile and the Greek position toward the barbarian mean here in this context? These examples show, as appears from the context, how little observation of natural law there exists. The sequel is that the great nation of Sparta approved of theft. In other words, the Jewish position toward the gentile and the Greek position toward the barbarian are against the natural law. But the Jewish position was largely based on the fact that the gentiles were polytheists or idolators. Here you understand the meaning of this remark that the natural law does not allow any division of mankind into hostile societies; that affects also religious dissension. And the only way out of that would be to allow that polytheism and idolatry are not necessarily against the natural law, a point which I have made before.

The last point: There is also a brief reference to Christianity, with a view to their principle that they[lv] need not keep faith with heretics, which is also from Locke's point of view a crime against natural law.

I would in conclusion only mention one passage where the translator found difficulty, and where the thought is intelligible and very important for the understanding of the whole argument. In the last paragraph here or the paragraph before, Locke makes this point: Granting that there is universal consent, say, regarding theft, that would not yet prove that theft is a crime against natural law. That's the point he makes here. Now granting what cannot be granted because it is not true—but if one *is* willing to grant it, consent can never lead us to a knowledge of the natural law. And he gives here the example of something where there is universal agreement without proving it is natural law, namely, that gold is everywhere esteemed more highly than *plumbum*, lead. Universal agreement does not prove that natural law sanctions the dignity of gold. People esteem gold more highly than lead on the basis of certain prudential reasoning, and that reasoning is [the same] everywhere that gold is known[35], but that does not mean it is a natural law. That passage may be of some importance in understanding the kind of natural law which Locke suggests: that there are certain prudential reasonings, like preferring gold to lead, which lead also to preferring, say, peace and order to anarchy and war as a rational preference, and that is all there is to it.

But I come now to the sequel here, where he makes the argument more precise. What does he say? "Such a universal consent could indicate a law of nature; it could not prove it. Such universal consent could affect that *I believe with greater vehemence*; it could not affect that I know with greater certainty that the opinions in regard to which all men agree is the law of

[lv] Namely, Christians.

nature."[lvi] And now we come to the passage which the editor didn't understand: "For I cannot know with certainty whether this universally held opinion is the view of everyone in private, for it [namely, my thought about other men's opinions—LS] is faith, not knowledge."[lvii] What does he mean by that? In other words, I find universal agreement about the execrable character of murder. Locke says, I can't have such knowledge. Why can't I know the fact of universal consent?

Student: People do not always say what they think; for instance, the mistakes seen in public opinion polls.

LS: That is exactly it. What Locke means has been said more simply and clearly by Descartes in the *Discourse on Method,* the Third Discourse, in which he says this: He would like—Descartes—to make it a rule of prudence to live in accordance with the opinions of the people among whom he happened to live. He wanted to be left alone, and so he wanted to be nice. But then he says: In order to find out what these opinions are, I took my bearings by their actions, not by what they say. Because in the corruption of our age, as he put it, people frequently do not say what they believe; and sometimes, even if they are honest, they do not say what they believe because they themselves do not know what they believe. That is true also of public opinion polls, isn't it? At any rate, Locke says, in this edition which this same man edited, on page 261 in a discussion on idolatry: "If idolatry were nothing but terminating our worship, i.e., thoughts, on something that is not God [in other words, if idolatry would not consist in certain overt acts, like genuflections before images, and this kind of thing; if idolatry were not something but a *thought* on something which was not God—LS] I do not see how there could be a law to punish idolaters, seeing their thoughts cannot be known."[lviii] In other words, even if they say they are idolators, that does not yet prove that they *are* idolators. Thoughts cannot be known. That is, I suppose, an overstatement. Locke is somewhat too pessimistic regarding public opinion polls. But for the interpretation of this passage, the later one is sufficient.[36] Universal consent regarding opinion cannot be established, because of the fact that we can never *know* what another man thinks: that is faith, he says, not knowledge. The last verse we have already discussed.

Now if we try to summarize this point. Locke's natural law teaching depends absolutely—Locke's natural law teaching *as he meant it* depends absolutely on what he thought about the value of this demonstration of the existence of god and the connection between the demonstration of the existence of god and the natural law proper. More simply, Locke's natural law teaching as he meant it depends absolutely on the fact that the immortality of the soul is established by man by reason—not on the basis of biblical texts, but by reason. And no such demonstration is given here in any form. Later on he even says explicitly it cannot be given. Therefore the natural law, as Locke pretended to see it, is in his own opinion baseless. And if he wants to have some guidance for man and not to believe in this so-called relativism, he must have had a new basis for natural law, or for human morality or however you call it. And so then we must see whether we can discern anything about it from the last three essays.

[lvi] *Essays*, 176/177. Strauss's translation. The Latin reads: "*hujusmodi fateor consensus indicare poterat legem naturae probare non poterat, efficere vehementius credam, non ut certius sciam eam esse legem naturae*."

[lvii] *Essays*, 176/177. Strauss's translation. The Latin reads: "*certo enim scire non possumvati cujusque sententia, fides enim est sed non cognitio*."

[lviii] *Essays*, 261. Strauss twice uses the plural "thoughts" here instead of Locke's singular "thought."

I suppose we are already beyond our time, but if there are one or two little points on which you . . . or am I mistaken? No, I think I am correct—you have quite a few little points, emphatically.

Student: [. . .] Where did he get the story about Socrates?[lix]

LS: That is probably in Diogenes Laertius [lx] or[37] [Aulus] Gellius.[lxi] I don't know. I have heard something of this described. In regard to Cato, I remember it more distinctly. But there was an enormous amount of gossip regarding antiquity, and part of it has come down today from writers like[38] [Aulus] Gellius [. . .] It would have been the duty of the editor, sure. That is his business. It was relatively easy to find out, because all the nasty things said against Socrates were repeated by certain Lutheran theologians of the eighteenth century in order to show that all virtues of the pagans could only have been splendid vices . . . It would have been extremely dubious to prove that, but surely one should substantiate that. But still, that is not terribly important; that was not the main picture.

May I address a question to the class? The most important question which appeared last time was the question of the proper promulgation of the natural law. Have we learned anything new on this subject beyond what we have seen last time? Is the natural law duly promulgated?

Student: He seems to be calling into question tentatively the possibility of promulgation. That if this can only be known after the proof of the existence of god and the immortality of the soul, then he questions whether this is possible at all on his kind of knowledge, the kind of knowledge that he sets forward. To make the point even more strongly, I would say that it is not only not promulgated, but that it cannot be.

LS: In other words, the difficulty which I stated regarding the immortality of the soul, if stated clearly, decides in itself also against the possibility of promulgation. Yes, very good.

Student: If a universal opinion held by everyone cannot prove there is a natural law even where everyone reasons, and if he means sense perception . . . I mean, if that is Locke's way of finding out what natural law is, then that would seem completely to rule out . . . the chance of finding out anything about natural law. Even if you base it upon utility, you must look at certain things which are held in common, and so forth.

LS: In other words, what you say is this: this skepticism regarding our knowing the opinions of others could be destructive of anything which Locke might try to do. Yes, I think so, this could be stated; but Locke, I would assume, exaggerates here deliberately. The example regarding idolatry shows he is concerned with toleration. In other words, no interference whatever with what people think; and therefore he states this crude principle that what people think cannot be known, and therefore it cannot be subject[39] [to] legislation. So he exaggerates, surely. But even beyond that, one could say [that] when Locke says the majority

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[lix] A reference to *Essays*, 177. For a possible answer to the student's question, see editorial note 82 on page 197 of John Locke, *Questions Concerning the Laws of Nature*, ed. and trans. Robert Horwitz, Jenny Strauss-Clay, and Diskin Clay (Ithaca: Cornell University Press, 1990).

[lx] Diogenes Laertius, author of *Lives and Opinions of Eminent Philosophers*. Little is known of his life; not even his dates are certain, but he probably lived in the third century AD.

[lxi] Aulus Gellius (ca. AD 125-180), author of *Attic Nights*, a collection of excerpts from many ancient authors.

of men act on no other principles than that of immediate advantage, how does he arrive at that proposition that the large majority of men choose what is immediately advantageous to them and have no other principles? One could perhaps say, not in judging Locke but in defending his policy, that this proposition is based precisely *not* on what people say but on what he has observed through the years. But the question then would be a different one: How are such data going beyond any experience of any individual possible? That raises the whole question of induction, and that is another matter. So I think Locke would say that anything that *he* says about man's natural inclinations, namely, inclination only toward immediate advantage or pleasure and pain, is based on observation of what men do and in no way of what they say, because he says that they say just the opposite: they say all the time that they are guided by noble principles, and they act as if these principles affect them very little, if at all.

It is owing to this character of the *Essays on the Law of Nature* that it is necessary to stick to the text and even to interpret individual sentences at some length, and so we may lose sight of the broader problem . . . I think every one of you should really have read the few pages in Hooker, in the first book of the *Laws of Ecclesiastical Polity* where Hooker restates the traditional [doctrine of][lxii] natural law. Otherwise, you do not see what Locke is attacking, and the target of his treatise does not appear. For, contrary to the appearance created by Locke in his *Treatises on Civil Government*, it is much less that poor fish Filmer who is the target of the *Treatises* than the powerful and grand position of the traditional natural law doctrine. That was a convenient way of creating a kind of—what do you call that? Bogus—?

Student: Front?

LS: Well, it is a bit more than "front," because Filmer was a highly respected writer among the extreme royalists of England at that time. But Locke tries to kill two birds with one stone by making Hooker the target.

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[1] Moved "whole."
[2] Deleted "That."
[3] Deleted "and therefore."
[4] Deleted "simple."
[5] Deleted "on."
[6] Deleted "unwiser."
[7] Deleted "is."
[8] Deleted "(Q 85, Art 7 body)."
[9] Deleted "with."
[10] Deleted "(to the top of page 151)."
[11] Deleted "(151, second paragraph)."
[12] Deleted "He."
[13] Deleted parentheses. Moved "the translator."
[14] Deleted "(page 149)."
[15] Deleted "(middle of the page)."
[16] Deleted "(bottom of page 151)."
[17] Deleted "That would be the."
[18] Deleted "(top of page 153)."
[19] Deleted "page 127 (bottom), no."
[20] Deleted "That."
[21] Deleted "(165)."
[22] Deleted "about this."
[23] Deleted "(Note 2, page 154)."
[24] Moved "he does."

[lxii] Brackets in original transcript.

[25] Deleted “nature.”
[26] Deleted “lines 4 from 7 to.”
[27] Deleted “(page 191, middle).”
[28] Deleted “the.”
[29] Deleted “without.” Moved “—and not only criminal individuals but whole nations—.”
[30] Deleted “(page 173).”
[31] Deleted “there.”
[32] Deleted “there.”
[33] Deleted “can you.”
[34] Deleted “In paragraph.”
[35] Moved “the same.”
[36] Deleted “Universal consent cannot be established.”
[37] Deleted “Aurelius.”
[38] Deleted “Aurelius.”
[39] Deleted “of.”

On the Law of Nature III
Session 5: January 20, 1958

Leo Strauss: . . . at many points very subtle, and in a way even too subtle, because I did not have an overall picture of what Locke is doing in the last three essays, except of course that he is dealing there with the problem of obligation, which is clear from the very title. But[1] in your analysis of Locke, what specifically is the issue here?[i]

Student: It seemed to me that the issue was the problem of whether the law of nature is binding on men because it is directly god's will that they should obey a particular law, or whether the law of nature is binding on men because inherent in their very nature, in their being, is reason which [. . .]

LS: Yes, I do believe the difficulty of this section is in Locke's hesitation between these two different interpretations: the obligatory character of the natural law rests on the fact that it's the will of god, or the obligatory character of the natural law rests on its being rational itself. But could not one reply to this that Locke has answered this question right in the first essay, when he speaks of the cooperation of these two elements in order to make it a law? In other words, natural law must be rational in its content, otherwise man cannot recognize it by his natural reason; but to the extent that his reason tells him this is the right thing, you cannot speak of a law, properly speaking, because no man can be his own commander. Therefore, in order to speak of a law, the suggestions of reason must be grounded in the will of a superior, of god. That was the way in which he presented it in the first essay.

Student: This creates, or states, a difficulty regarding the punishment side of law.

LS: [. . .][ii] My reason tells me that theft is bad—unreasonable, bad. All right. But this is a prudential consideration to theft; it becomes more than that if disregarding it is a crime; and it can only be a crime if a superior legislator is there, and if a superior legislator is there, then there is the possibility of punishment at the same time. Why does the question of punishment affect the fundamental situation, in your opinion?

Student: If the side of the law of nature as dictate of reason is stressed, and the aspect of god's will is not stressed, then the question [be]comes, this prudential advice cannot be law because there is no authority to punish violations.

LS: But the question is whether this is not an unrealistic premise. In other words, there may be passages in which Locke speaks more of the will of god and less of the intrinsic rationality; there are other passages where just the opposite happens. But since he has explained in one passage how the two elements, God's will and intrinsic rationality, work together, he is not under an obligation to repeat this point all the time. I mean, the mere fact that Locke omits something which he has mentioned before does not in itself create a difficulty. Why do you see the difficulty lying in punishment?

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[i] Strauss responds to a student's paper, read at the beginning of the session. The reading was not recorded.
[ii] The transcriber notes: "Inaudible sentence."

Student: Well, it just struck me as significant that out of this problem, Locke comes to the idea of human law and human authority of a very different kind.

LS: Yes, but you must never forget the distinction between divine punishment and human punishment. You could draw up such a scheme, though of course too simple: crime against god's law, the natural law—divine punishment; crime against the human law—human punishment. Of course, that overlaps:[2] think of murder, which would be punished in both cases. We come to a different question, then, not only the question of punishment but the question of the relation between natural and human law. Where is the difficulty there?

Student: Locke has set up an apparatus for the enforcement of the natural law.

LS: Show me the passage where Locke says that human law is required to supply sanctions for the natural law. There may be one; I haven't seen it. In the *Treatises* he does that, but we are not reading now the *Treatises*.

Student: I don't think he says that you're required to have a human . . .

LS: Yes, that's another matter. The natural law assumes[iii] and even requires that there also be human law, and this human law is ultimately sanctioned by natural law, but neither its contents nor its punishment are simply supplied by the natural law.

Student: What I was going to say is that the relationship between the natural law and the authority to punish natural law, is just that . . .

LS: Oh, you can't punish a law.

Student: . . . the authority to punish violations of the natural law is a relationship where one executes the will of the superior in everything.

LS: But aren't there crimes against the natural law of which the human legislator or the human law doesn't take any cognizance? I mean, there is a strict formulation of the argument in this book between natural law and what we might call natural punishments, meaning punishments inflicted by god [after death].[iv] I altogether would say Locke does not speak anywhere of deduction[v] of the necessity of human government; he only shows where it would come in. That the authority of human government would be derivative from god's government, that he does say.

Student: The point I was trying to make is that, not only does he say it would be derivative from God's will, but that it would partake of this same character of absolute authority.

LS: Now we come to something else. [. . .][vi] All right, let us look at that, page 196, because I really would like to find the nerve of your argument. "The obligation of the natural law is everywhere the same, only the condition of life varies; and identically the same is the duty of

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[iii] In the transcript: "(assumes ?)"
[iv] The transcriber notes: "Inaudible, reference to life after death."
[v] In the transcript: "(deduction?)"
[vi] The transcriber notes: "Inaudible sentences."

the subject among the Garamates and Indians as it is for the Athenians and Romans,"[vii] meaning people subject to despotic government and people subject to republican government. Here he speaks of the natural law obligation. So we come back to this simple point. Our obligation to obey the human government is not itself a human obligation, for positive law cannot be obligatory on the grounds of the positive law, because you can always raise the question: Why should I obey this law as a whole which is merely imposed on me by god knows what people? I may be punished for that, but every pirate punishes me too if I don't obey him, and that is of course no moral obligation. And therefore true obligation to obey the positive law must have a higher source: the natural law. And here Locke says an odd thing:[3] here Locke says the duty of the subject is the same regardless of the kind of government. What is the meaning of that? I mean, I don't see anything very characteristic of Locke in this point. What is the duty of the subject, in one word? Is it not the duty of the subject, or of the citizen for that matter, to obey the positive law, regardless of whether that is a despotism or a very free country? The content of the law will differ.

Student: I also think of the duty of the citizen in the pure democracy theory; he also has a duty to vote, for example, which he doesn't have in the other.

LS: That's another matter: once the law is made, once he has voted, regardless of whether he likes it or not, he has to obey it, and he has to obey it as much as if there were a law handed down from a despot without asking him. That's what he means. Now there was a man who emphasized this point with particular force. You know that? Who made this point: liberty in the sense in which it is ordinarily understood doesn't make any sense; nowhere are you free to disobey the law? Who made this point? Sure, Hobbes. I mean, I don't say that Hobbes alone said that . . .

But let me come to . . . You made one point with great subtlety—and I am sure that there you have a point, though I have not been able to follow your argument—and that refers to the usage of Locke in the sixth essay. You will recall in the first essay Locke has adopted the Hobbean distinction between law and right . . . Well, why should I not give you the Latin forms and you can keep them in mind for ten minutes: *Lex* is law, and *jus* is right. That at least is the translation of the two words into French and German, and I think you recognize them in English. *Lex* is morally neutral, as it sounds: law. *Jus* has something to do with the Latin word *justum*, "just," so the element of right, righteousness, which we hear[4] [in] the English word "right," belongs also to *jus*. Now these terms were used without great distinction throughout the tradition; the terms were used interchangeably. Hobbes complained about that. Bad usage, confusing usage: there must be a clear distinction. *Lex* means the body of law, the obligations imposed on man, man's duties. *Jus* means the right, that which I may do. There are many things which I may do but must not do. Now Locke adopts that, and then if Mr. —'s observation is correct, he does not use the term *jus* anymore in the sequel. I believe you are right.

Student: Just one time: page 161.

LS: Yes, but where *jus* has the meaning here really of "right" in the sense of justice. O.K., but in the main you are right. And now what conclusion did you draw from the fact that at the

[vii] *Essays on the Law of Nature*, 196/197. Strauss's translation. The Latin reads: "*adeo ut obligatio legis naturae eadem est ubique, vitae solum conditio varia; idemque plane est officium subditi apud Garamantas et Indos ac apud Athenienses aut Romanos*."

beginning of chapter 6 there is such identity of the word *jus*, where *jus* certainly does not mean a right which I have but means a body of law? What conclusion did you draw from that? I didn't understand.

Student: He first uses the word *jus* in the sense of body of law, and then later he begins to use it in the sense in which he's defined it.

LS: I see. In the beginning he is speaking of god's right, right? And . . . how god's right broadens down, you might say, to human government. Yes, there may be something to that. But for the first appearance, I would suggest this very simple explanation, on page 180 or 181. Here he introduces the term not as his own term, but as the term of the jurists. Therefore he has no responsibility for that; that is not his own terminology. He uses the doctrines handed down by other people who of course did not have Hobbes's terminology. And then he builds on that a whole doctrine of what duty means, of what obedience means; and in this context he speaks indeed then of the right, *jus*, of the right of god, from which the right of all governments are derivative. But you see, on the other hand, from the usage on pages 184 to 5, when he speaks of the right of [nature and] creation and later on the right of pacts, that *jus* here takes on a somewhat different meaning and does not [any] longer have the right of what the Continentals call "subjective right." And I don't believe that this leads further. What conclusions follow from the fact that Locke emphasizes here so strongly that all obligation presupposes the will of a superior, ultimately the will of god? What follows? What new things do we learn from this mere fact? That I fail to see.

Student: Well, the argument I was making was that because he presupposes not so simply the will of the superior but the fact that he exists, the will of a superior authority which is promulgated per se is evidence that this will not be obeyed.

LS: All right, but that would not be a natural law. If it would, that would be in the case of god a divine and[5] [positive] law. A natural law must be a law the content of which is evident to human reason. So we come back to the old definition given in essay 1, that the natural law has these two prerequisites: the will of god, and the rationality of its content. If you had only the will of god and no rational content, you have a divine positive law. Or if we have rationality of content but not the will of god, then it is merely[6] advice or counsel which we give ourselves. So I see no difficulty here either. The difficulties lie elsewhere.

But I would like to mention a few passages to which you referred. On page 196, you could not help repeating a blunder which the editor made, on the bottom of page 197: "If these things are laid down we say that the obligation of the natural law obtains through all ages and throughout the whole universe unimpaired and unrestricted, for it is not *delightful*,"[viii] which is the Latin *laeta*, which doesn't make any sense, as if the delightfulness of the law can be the ground of obligation. One has to read *lata*, and then it means: because it has been given to a part of the human race, or [rather], because it has *not* been given to the human race. So that text must be changed.

Then another minor point on page 213 where I believe I cannot agree with you, where you said something about utilitarianism which I didn't think applied here.[7] Now in criticizing

[viii] *Essays*, 213. Strauss's translation. The Latin reads: "*Verum hic breviter observare licet hujus sententiae propugnatores petere morum principia et vitae regulam potius ex appetitu et inclinatione hominum naturali quam ex legis obligatione, quase id moraliter optimum esset quod plures appetunt.*"

these people who derive natural law from the self-interest of each, he says, ten lines from the bottom on page 213 (I make a few changes in translation as I go):

"But [not "in truth"—LS] one may make here a distinct observation that the appearance of this view seeks the moral principles and the rule of life rather from the appetites and the natural inclination [not "instinct"—LS] of man than from legal obligation, as if that were morally best that which most men desire."[ix]

That is the sentence on which you base your conclusion. I ask you: With what right can you say that that proves that utilitarianism leads to majoritarianism?

Student: I should have said that predicted how it would be utilized.

LS: I see, but first one has to get at what Locke means. Locke means this. If we want to establish what the moral principles of the rule of life [are], we have to start from the legal obligation, of course, from the natural law and not from man's appetites or natural inclinations. Number one. These people who attack start from men's appetites and men's natural inclinations, and they imply that that is morally best what most desire. What does he mean? Most people are not concerned with duty and virtue but only with self-interest,[x] and from this fact they draw the erroneous consequence, that self-interest as distinguished from virtue or duty is the basis of morality. I mean, what you say may still be right regarding your assertion about utilitarianism, though it would need some proof. But there is no indication of that here.

Now these were some particular points which your paper brought up, and I would now like to turn [to the text].[xi] And I would like to remind you of some points we made in the first two discussions regarding the first five essays. Now Locke presents throughout the book, including the last three essays, at first glance a traditional natural law teaching. Now this traditional natural law teaching, as it appeared from Locke or through Locke, has the following three characteristics. In the first place, its basis is man's natural constitution or natural inclination: man is by nature ordered, has a natural inclination toward an end. His end has an inner articulation: it consists of a variety of ends of which there is a hierarchy. This end is the happiness of man; the core of this happiness is virtuous activity. In other words, the good human life consists in obedience to the natural law, the natural law prescribing those actions which man has to do in order to reach his natural end. The second point is a presupposition of this view, and that is divine providence and immortality of the soul. In other words, without god's taking care of man—and this taking care can also itself result in punishment, and such punishment not being available in this life sufficiently, there must be punishment after life; therefore, immortality of the soul. And the third point, the natural law is sufficiently promulgated, because if it were not sufficiently promulgated, i.e., sufficiently known, man could not obey it.

Now Locke made the following suggestions. In the first place, he denies that man's duties can in any way be known from his natural inclinations. In an unwritten essay he stated this explicitly, as we have seen, and even in the passage which we just read it appeared again:

[ix] *Essays*, 213. The Latin reads: "*Verum hic breviter observare licet hujus sententiae propugnatores petere morum principia et vitae regulam potius ex appetitu et inclination hominum naturali quam ex legis obligatione, quase id moraliter optimum esset quod plures appetunt*."

[x] In the transcript: "(self-interest?)"

[xi] In the transcript: "inaudible."

man's natural inclinations do not lead to virtue but to the subversion of all virtue. Second point, there is no proof of the immortality of the soul. Locke does not say so, but he demands the immortality of the soul and does not even attempt to prove it. And another suggestion, of which we[8] found some traces last time as far as regards divine providence: men's existence is not the work of kindness, of care, of providence. The conclusion and partly the independently arrived at assertion, number three: the natural law is not sufficiently promulgated. In other words, men's ignorance of the natural law is due not only to their carelessness and criminality, but also due to the absence of sufficient leisure to discover the law of nature, for the law of nature is hidden and secret. All these points amount to a question, to a radical question, if not of natural law as such, at any rate of the traditional natural law teaching, the teaching elaborated practically by Thomas Aquinas and handed down to English law through Hooker.

Now if that is so, we must raise the question: How can Locke build up a structure of a moral teaching after he has pulled down, more or less secretly, the old structure? How to get an alternative to the traditional natural law teaching? Now we have observed last time the following points. Locke says society stands and falls by the natural law, by the natural law obligation to keep the compact. But[9] as Locke doesn't tire of emphasizing, societies are ignorant of the natural law. Now without knowledge of the natural law, one cannot obey it, says Locke. Hence societies owe their existence to something other than the natural law. What can that be? Answer: Self-interest and pleasure. Namely, it does not pay to break the social compact, if we use that term at all. In other words, if a man wants to break it, well, the chances are that he will be punished by civil authority; and if he wants to break the social compact altogether and run out into the wilderness and live by himself, he will lead a very unpleasant life, and the majority of men are prevented from doing that by consideration of interest and pleasure. Now if we turn then to self-interest, we have to reduce it to its principle, and that is self-preservation.

Now I would like to refer you to only one further passage again, 157 to 159, the point in which Locke comes closest to speaking of the threefold natural inclination of man in the Thomistic manner. What does he say? Man in the first place finds in himself a proneness and preparedness to contemplate God's work and his wisdom and power in his work and to give him honor and glory. Secondly, he has a certain natural propensity to enter society. And the third point, he has an inner instinct to preserve himself. Now regarding this inner instinct, he says, on the top of page 159—can you read that?

Reader:
No one is found, since man is driven to that to that part of his duty—

LS: Meaning, to preserve himself.

Reader:
by an inner instinct by a very strong, exaggerated way, and no one is found who neglects himself, who abdicates himself, and all are more bent on this thing than they should be—

LS: Namely, they are more bent on self-preservation than they should be.

Reader:

there is no need for me to elaborate this point.[xii]

LS: In other words, Locke says only of the desire for self-preservation that it is a forceful thing in all men and affects them very powerfully. He does not say any such remark about the two other so-called natural inclinations, namely, knowledge and worship of God, and sociality proper. So self-preservation really has a special function here, and that is very clear.

Now before we turn to our last essay, I would like to repeat this difficulty, because this difficulty persists in Locke's work until the end. I take one passage from the *Essay Concerning Human Understanding*, in the fourth book, chapter 3, paragraph 18, "Morality capable of Demonstration":

"The idea of a Supreme Being, infinite in power, goodness, and wisdom, whose workmanship we are and on whom we depend, and the idea of ourselves as understanding, rational beings, being such as are clear in us [these two ideas, namely, of God and of ourselves—LS], would, I *suppose*, if duly considered and pursued, afford such foundations of our duty and rules of action as *might* place morality among the sciences capable of demonstration."[xiii]

Here is one line of argument of which we have found many traces here, but you see the qualifying expressions, "I suppose" and "might." Now, in the sequel of the same paragraph, he gives another example of how morality could be raised to a demonstrative science and there you do not find any theology:

"*Where there is no property, there is no injustice*, is a proposition as certain as any demonstration in Euclid; for the idea of property being a right allied to anything,[xiv] and the idea of injustice is given to the invasion of that right,[xv] it is evident that these ideas being thus established and these names connected[xvi] to them I can as certainly know this proposition to be true as that a triangle has three angles equal to the right." [xvii]

[. . .] These are what I think [are] called analytical propositions: you only have to know the meaning of the terms to see that [they] must be. These are the two entirely different forms of establishing a moral teaching or, say, a natural law teaching, what Locke had in mind. First, a traditional, theological one. The other one has nothing to do with theology. But this is a very imperfect indication of that other kind of natural law teaching. Why? Why is the teaching which begins with the proposition, "Where there is no property there is no injustice," and also, no government allows absolute liberty, why would this be very defective [as a proof]?[xviii] What can you do with it? Can you not rightly answer: So what? Why does that cease to be susceptible to such a perfectly legitimate reply? If Locke can show to you that

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[xii] *Essays*, 156/158/159. The reader's translation. The Latin reads: "*Cum ad eam officii partem interno instinctu nimium quam impellatur, nemoque repertus sit qui se negligit, se ipsum abdicet, et in hanc rem omnes forte magis attenti sint quam oportet, non opus est ut hic moneam*."

[xiii] *Essay Concerning Human Understanding* 4.3.18. Strauss's emphasis.

[xiv] In the original: "for the idea of property being a right to anything"

[xv] In the original: "and the idea to which the name injustice is given being the invasion or violation of that right"

[xvi] In original: "annexed," not "connected."

[xvii] *Essay*, 4.3.18. The last part of this sentence should read: "that a triangle has three angles equal to two right ones."

[xviii] In the transcript: "inaudible."

without property you will be a very poor fish, you will be very unhappy—in these analytical statements, Locke is silent about the natural sanction; these analytical statements do not tell you why property is good, or necessary, why government is good or necessary. The complete Lockean argument, which he never clearly developed, would show that man needed property, and that man needs government, and construes from that the whole system of men's duties and rights.

I think I read one more passage from the *Essay Concerning Human Understanding*, first book, chapter 3 again, paragraph 6.

"I grant the existence of God, is so many ways manifest, and the obedience we owe him, so congruous to the light of reason, that a great part of mankind give testimony to the law of nature: but yet I think it must be allowed, that several moral rules may receive, from mankind, a very general approbation, without either knowing or admitting the true ground of morality; which can only be the will and law of a God, who sees men in the dark, has in his hand rewards and punishments, and power enough to call to account the proudest offender. For God, having, by an inseparable connexion, joined virtue and public happiness together, and made the practice thereof necessary to the preservation of society, and visibly beneficial to all, with whom the virtuous man has to do; it is no wonder that every one should not only allow, but recommend and magnify those rules to others . . . "[xix]

You see here, if you take this presentation, you have a complete system of the duties of men. This includes, for example, the prohibition against suicide, not to take examples from unnatural sexual crimes. Think of the traditional natural law teaching. That is based on a theological premise, allegedly on a theological premise which can be established by natural reason alone: a natural theology, not a revealed theology. Now then Locke says that there are several moral rules which can be understood and seem to be valid without reference to god, and these are the rules of action which are directly related to public happiness, so that you cannot have a very wasteful government, and you must have a certain decent proportion between taxes and what people can bear, and many other rules of this kind. That everyone can see, even if he lacks knowledge of god. That is a natural law teaching of an entirely nontheological kind. Now what Locke did, partly in the *Essays* and more in the *Treatises* is—the emphasis is entirely on this part, like no taxation without representation, that Locke establishes with no theology; but he creates the impression that this political natural law teaching stands and falls by the theological premise. The true premise, which is much closer to Hobbes, as we shall see, he never sets forth clearly. The only indications he gives are the difficulties in the argument, both in the *Treatises* and especially in the youthful essays.

Now let us turn[10] to the last three essays, because I think the new doctrine regarding the law of nature comes out most clearly here.

Student: Does Locke believe that a man must be educated to know the natural law?

LS: There is no inborn knowledge of any kind in Locke, and least of all of moral virtue. He uses the term "a studier of the natural law." Decidedly, one must be a studier.[xx]

[xix] *Essay* 1.3.6. In the original transcript the passage is abridged." Ellipsis filled by editor; "us" changed to "others."

[xx] There is a break in the tape at this point.

Let us read the first paragraph, because that gives an indication of the alternative to natural law.

Reader:
Since there are some who trace the whole law of nature back to each person's self-preservation and do not seek its foundations in anything greater than that love and instinct wherewith each single person cherishes himself and, as much as he can, looks to his own safety and welfare, and since everyone feels himself zealous and industrious enough in self-preservation, it seems worth our labour to inquire what and how great is the binding force of the law of nature. For if the source and origin of all this law is the care and preservation of oneself, virtue would seem to be not so much man's duty as his convenience, nor will anything be good except what is useful to him;—

LS: Yes, "anything *morally* good."

Reader:
and the observance of this law would be not so much our duty and obligation, to which we are bound by nature, as a privilege and an advantage, to which we are led by expediency. And thus, whenever it pleases us to claim our right and give way to our own inclinations, we can certainly disregard and transgress this law without blame, though perhaps not without disadvantage.[xxi]

LS: The last line must be translated differently: "and therefore we can perhaps not transgress the natural law without harm, but we can certainly transgress it without crime whenever it pleases us to abandon our right."[xxii] That he completely mixed up.

What does he mean by that: "whenever it pleases us to abandon our right"? He is speaking strictly on the Hobbean basis: right of self-preservation. Hobbes's argument was this. A declaration of fundamental rights; that rights cannot be preserved without peace; therefore I must strive for peace. The condition of peace, and nothing else, is the content of the so-called natural law. The condition of peace is of course that you behave with tolerable decency to your neighbors. And what Locke says here is this: that if I want to behave nastily toward my neighbors by killing and beating them, and so on, this will[11] probably not [be] without harm, meaning chances that you are hurt again are considered very great. But there is no crime involved as far as the *natural* law is concerned, as distinguished from the civil crime. Because what do we do if we commit such an act? If we are such fools that we cede from our right to self-preservation, we endanger our life or security unnecessarily. That is the meaning of this passage. So this then is the alternative which Locke does not here criticize. What he does in the sequel is to give a fairly orthodox description of what obligation means, and the editor has taken great pains to find out these obscure English writers from whom Locke may very well have taken this passage. I have not yet had the opportunity to look up these men. I am sure there would be very profound and little changes which the editor did not emphasize. But that must be done by someone else.

[xxi] *Essays*, 181.
[xxii] The Latin reads: "*adeoque sine incommodo forsan non possumus, sine crimine certe eam possumus negligere et violare quandocunque nobis cedere jure nostro libitum fuerit*."

I would like to turn to a few points on page 189, *secundo*, because I do not believe that you will find out much from the text. Locke gives three arguments—that is the only interesting part of the first line of this chapter—in which he tries to *prove* that the natural law obliges all men. Now let us read the central argument that synthesizes the theme.

Reader:
If natural law is not binding on men, neither can positive divine law be binding, and that no one has maintained. In fact, the basis of obligation is in both cases the same, i.e. the will of a supreme Godhead. The two laws differ only in method of promulgation and in the way in which we know them: the former we know with certainty by the light of nature and from natural principles, the latter we apprehend by faith.[xxiii]

LS: Now what do we say to this argument? That is the central argument. How does he argue? Why is the natural law obligatory?

Student: He argues that it is obligatory because it is the will of God.

LS: No, that would not be quite right, because that has [yet] to be proven[12]. But how does he argue here? He argues from a conceded premise, and what is the conceded premise?

Student: The positive divine law is binding.

LS: Is obligatory. On what grounds does he accept that as his premise?

Student: On the grounds that he claims to know that it is?

LS: What do you say to this . . . suggestion?

Student: . . . I am not sure.[xxiv]

LS: In the next passage, or in other passages where he speaks of this, he quotes this passage: that the majority of men had never heard of revelation. So in other words, he argues here on the premise—which from his point of view is wholly problematical, and certainly untrue to him—that no one had denied the obligatory character of the divine law. Then he says: If you grant that, you must grant the obligatory character of the natural law. What Locke indicates more seriously by this, I believe, is this: that the traditional natural law teaching is in fact based on the revealed teaching; and therefore he feels free to argue this way.

Now we turn to the much more important, at least as far as I can see up to now, seventh essay, in which he has the following plan. First, objections to the universal perpetual obligation of the natural law, which is in the first paragraph. In other words, here Locke states explicitly a case *against* the universal and perpetual obligation of natural law. Then in his sequel on page 197, he describes in a traditional way the character of the universal and perpetual obligation. Then, pages 197 to 201, he proves the assertion. And in the end, pages 201 to 203, he refutes objections to that. Now let us concentrate on the main points.

[xxiii] *Essays*, 189.
[xxiv] The student's response here are uncertain.

What is the objection to the assertion that the universal law is universally and perpetually binding? You have only to think about it. I mean, they are not alien things, forgotten; they are still mentioned in every elementary social science course. That is the beginning social science. What is the objection? Why can it not be binding or obligatory?

Student: Because everybody has different attitudes. It is the whole conception of relativism.

LS: Yes, sure. In other words, there is an infinite variety of opinions on what is right or wrong, and that shows that men cannot have any certain knowledge about natural law. In this context he gives a few examples of what strange opinions people have had. Will you read that?

Reader:
Hence, among these nations, thefts are lawful and commendable, and the greedy hands of robbers are not debarred from violence and injury by any shackles of conscience. For others there is no disgrace in debauchery; and while in one place there are no temples or altars of the gods, in another they are found spattered with human blood.[xxv]

LS: Yes. Now let us stop here. What does he mean by this, that there are countries in which there are no temples or altars of gods? What does that mean? I have referred to this problem on former occasions. What does that bespeak, the absence of temples of gods?

Student: He states explicitly that it is a duty of the law of nature to worship God.

LS: Surely. But is there not a difference between gods and God? In other words, the absence of polytheism is as much a crime against natural law as the presence of theft and piracy are. Of course it would be unfair to say that Locke would say that polytheism is a natural law duty, but what he means is that natural law itself is neutral to the difference between monotheism and polytheism. You have to worship higher beings. Maybe only one, but—I have discussed this on a former occasion, as some of you will remember. Now when we look at the sequel on the next page, after he has stated this argument, he says: "In spite of all this we assert that the obligation of natural law is perpetual and universal."[xxvi] Yes, but it is not sufficient to assert, without proof. Now where could he find the proof? What does he say in the immediate sequel? "We *have* already proved that there exists an obligation of this law and now we will discuss how far or to what extent this obligation reaches."[xxvii] So Locke claims that we have already disposed of the difficulty created by the allegedly infinite variety of human opinions regarding right and wrong. He does not even attempt to refute it here.

The others are more or less scholastic explanations, very important in themselves but not too important for the broad object of these arguments, because the question with which we are concerned is the *ground* of the obligation of natural law and not these very important distinctions, for example, that all men are always obliged not to commit murder. There are other things to which *not* all men are always obliged. You are not always obliged to help the poor, for some humans may be so poor themselves that you cannot help them. You are not always obliged to be a father, a brother, or a husband, etc., because the obligations here are rather of this kind: *if* you are a father, you have certain obligations; and *if* you are a husband.

[xxv] *Essays*, 191.
[xxvi] *Essays*, 193. Strauss's translation. The Latin reads: "*Dari hujus legis obligationem jamjam probavimus; ista vero obligatio quanta sit venit nunc discutienda*."
[xxvii] *Essays*, 193. Strauss's emphasis.

But there is no obligation to be a husband. And various other distinctions which are not necessary for our present purpose, and so we may skip them.

Now what else does he here consider? In the sequel on page 199 we find a very strong statement of the view that natural law is decidedly the rational law, but we have found these thoughts before. Since natural law expresses what is convenient or fitting to a rational nature, to men being like men, it is unchangeable, because the essence of man is unchangeable. In the sequel, he gives then this point which Mr. —— quoted among others, that the natural law is absolutely necessary and evident, as evident as a mathematical proposition. He has said this before, but what is the difficulty on which he does not touch here? The natural law is as rational, as evident, as necessary as any mathematical proposition, and therefore it is obligatory. What is the difficulty?

Student: [. . .] to whom it is self-evident [. . .]

LS: That's it. So in other words, not all men are mathematicians. Are all men studiers of the natural law? Can there be studies of natural law? If the natural law is conceived of as something to be discovered, gotten out from a hiding place, then the majority of men must be expected to be ignorant of the natural law. And then they cannot be found guilty of transgression. Only if the natural law has the character of natural inclination, or of something which one can call implanted in the minds of men, can it be obligatory. That is the issue which goes through the whole book.

In the central argument here, on page 203, Locke gives a further explanation. Let me first say this. The objections which he refutes at the end of this essay are not the real objections raised at the beginning of the essay but more subordinate. For example, the famous difficulty that it seems that God in the Bible commanded the Hebrews to steal things from the Egyptians. God himself seems to have commanded a theft. Now if God, the legislator of the natural law, commands people to disobey, what can we expect of any human legislator? That is an old question, and Locke merely repeats the old answer: that God as the supreme owner of things changes rightly any property relation. In other words, God did not command to steal: God, out of his power, deprived the Egyptians punitively of their property right and gave it to the Hebrews. So the prohibition against theft stands unimpinged. That is simply a repetition of the old argument. Now let us turn to the central argument on page 203. The second one.

Reader:
If sometimes we are, and sometimes we are not, bound to render the same obedience to parents, then this shows that the binding force of natural law is not perpetual; nay, rather, if a prince commands differently, we are not bound to obey parents. Then, in that case we reply that we are no doubt bound to comply with the orders of parents but only in things lawful, and this obligation is never annulled; but if a king commands otherwise, a parent's orders become unlawful; for instance, an order to stay at home and show concern for the family, when the king is summoning a man for military service. Thus the binding force of natural law does not by any means cease, yet the nature of the case itself changes."[xxviii]

LS: Yes. I wondered why Locke assigned such a conspicuous place to this argument. But it appears very plain if you argue as follows. You have here the father, and the command of the father is legitimately overruled by the command of the king. The father says to the son: "You

[xxviii] *Essays*, 203.

work on the farm and take care of the family property." The king says: "No, because you must join the army." The son has to join the army. You have here a proportion: the lower superior, the father; and the higher superior, the king. Now if we take that proportion and infinitize it, we come to God. What about the relation of the princely command to the command of God? The same rule would apply, of course. The command of God has a higher rank than the command of the prince. But what is the problem here? Those of you who have read Hobbes may remember.

Student: There is one problem, that you have a right that is ultimate for self-preservation, and you have a right to defend preservation.

LS: No. I mean simply this prince and God, the sovereign and God.

Student: The relationship is not exactly the same as between two men on earth.

LS: But still, they are not coordinate, the father and the prince. The father is subordinate to the prince; the prince is higher. Now God is infinitely higher, the highest; and therefore the command of God overrides the command of the prince. But what is the consequence of this statement of the political problem? You have to obey God and not the sovereign in case of conflict. In case of conflict: otherwise, no problem. But that conflict is such a great issue because in practice it meant a dualism of powers, power spiritual and power temporal; and that was exactly the target of Hobbes's doctrine of sovereignty. I think Locke alludes to this difficulty here. Because we shall see in the *Treatise*, contrary to a very popular view, Locke does *not* allow resistance to the law of the secular government. For what does resistance mean, when we ordinarily use it?

Student: [. . .] [Revolution][xxix]

LS: Revolution is another thing. But when we think of resistance, we think of individuals. But that is for Locke a very great problem. Because Locke encourages a resistance of the majority, [he] legally admits the possibility of a resistance of individuals. But that is of no importance whatever; that amounts to nothing. We can perhaps restate another passage: If some injustice is done to this individual here and that individual there, that politically does not exist. But if the majority is downtrodden, then the majority is entitled and able to carry out a revolution.

Let us turn to the eighth essay, which is in a way the most important, because here Locke states throughout the essay an alternative to natural law teaching altogether. Now first he quotes the famous enemy of natural right, the old skeptic Carneades,[xxx] who has said there is no natural right—*jus naturale est nullum*: that men are by nature driven to take care of their self-interests.[xxxi] They are not by nature driven to act justly. That is a clear-cut analysis. But

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[xxix] In the original transcript: "[Inaudible.] [Revolution]"

[xxx] Carneades (214-129 BCE), head of the Platonic Academy, famous for defending an extreme form of skepticism, including a critique of the idea of natural right.

[xxxi] The Latin term that Strauss is paraphrasing here is from Lanctantius who himself attributes it to Carneades. See *Divine Institutes*, 5.17.2-3: "*Carneades ergo, quoniam erant infirma quae a philosophis afferebantur, sumpsit audaciam refellendi, quia refelli posse intellexit. Ejus disputationis summa haec fuit: 'Jura sibi homines pro utilitate sanxisse, scilicet varia pro moribus; et apud eosdem pro temporibus saepe mutata: jus autem naturale esse nullum*.'" ("Carneades, therefore, since what the philosophers conveyed was weak, audaciously undertook to refute them because he understood

now in the sequel we see that Locke is more subtle than Mr. —— thought. Let us read the sequel, after the quotation.

Reader:[13]
'and there is likewise no such thing as a natural law of justice, or, if it exists, it is the height of folly, inasmuch as to be mindful of the advantages of others is to do harm to oneself.' This and other such arguments Carneades once maintained in his Academy. His very sharp intellect and power of speech left nothing untouched, almost nothing unshaken, and there have been a number of people ever since who have assented to this doctrine very eagerly.

LS: "With the greatest zeal or partisanship."

Reader:
Since these people have lacked virtues and those gifts of the mind whereby they might prepare for themselves the way to honours and wealth, they have complained that mankind has been treated unfairly and have contended that civil affairs were not conducted without injustice, as long as they were debarred from general and natural advantages destined for the common good. They went so far as to proclaim that the yoke of authority should be shaken off, and natural liberty should be vindicated, and every right and equity be determined not by an extraneous law but by each person's own self-interest.[xxxii]

LS: Let us break here. What is the characteristic of these people?

Student: They are the "outs."

LS: Yes, but still there can be "outs" who are not inept people. But they are inept people. I think we can say they lack the power to earn honor and virtue . . . They lack the virtue and gifts of the mind needed for acquiring honors and wealth, and they are concerned with this, they are not very happy about this. Then they say they have been unjustly treated, and they make an appeal to natural liberty and of course call for the abolition of government. These people are not Carneades; these are followers or successors of Carneades. Carneades did not have this zeal and partisanship because he was not so concerned with money and wealth as these people are. Locke makes a clear distinction. But above all, let us look at the substantive criticism. It amounts to this: they deny natural law, and in the same breath they appeal to natural law. They say: "A terrible injustice has been done to us." Carneades would not say that. He would say: "They took care of their interests and hurt me, and if I had the opportunity I would do the same." In other words, Carneades would argue more like Mr. Bentham.[xxxiii] These fellows, they are not so bright and with misguided moral indignation blame society for their own ineptness. And they are the same people whom Locke will call

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that they could be refuted. The point of his disputation was this: That men sanctified laws for themselves, for their utility, varying of course according to their manners, and in the case of the same persons often changing according to the times: There was, however, no natural law.")

[xxxii] *Essays*, 205. In von Leyden's translation there is not a second "should" in this last sentence quoted here; it reads "natural liberty be vindicated."

[xxxiii] Jeremy Bentham (1748-1832), English philosopher and legal reformer. Bentham was an outspoken advocate for the moral theory of utilitarianism, which Strauss interprets as morality in the interests (pleasures and pains) of individuals.

later on the quarrelsome and lazy.[xxxiv] Instead of really intelligently working toward improvement, they complain. And the rational and industrious part of mankind, to which Locke naturally belongs and to whom he speaks later, is simply the reproof of this iniquitous opinion.

But now let us see: How does he proceed? I warn you. The teachings of Carneades, the theoretical teaching of Carneades, is one thing. The theses of these—how would you say this?—"outs" is misleading, because the "outs" are sometimes as clever as the "ins." "Suckers" would not be the right word, but "the inept segment"; let us say "the quarrelsome and the lazy." That is not Carneades. Good. They are people who misuse and misunderstand the arguments of Carneades. How does Locke meet Carneades? Because these other people are easy to meet: they are simply contradictory. How does he meet him? What does he do? Carneades had said there is no natural right; the basic thing is self-interest and nothing else. Let us read the first paragraph afterwards on this same page.

Reader:
First, by the basis of natural law we mean some sort of groundwork on which all other and less evident precepts of that law are built and from which in some way they can be derived, and thus they acquire from it all their binding force in that they are in accordance with that, as it were, primary and fundamental law which is the standard and measure of all other laws depending on it.[xxxv]

LS: Yes, that's it. Now what does he do? I mean, Locke is very clever and one must watch him very carefully. The thesis[14] of Carneades was that private utility is the standard. Locke makes it: private utility is the foundation of natural law. That comes somewhat closer to Hobbes. But then he takes a further step: private utility, being the foundation of natural law, is the fundamental natural law. Man has not only a right to take care of his interests; man is duty bound to take care of his interests and this must be his overriding duty. Any other consideration, any other duty, must be measured against that highest duty: my self-interest. And if it endangers my self-interest a *bit*, I commit a subversive crime doing it. Therefore, Locke argues later on[xxxvi] when he speaks of the famous models of virtue like Fabricius and[15] [Curtius]: If this view is correct, these paragons of virtue who devoted their lives to their land and to mankind were the greatest criminals, of course. That is perfectly evident, because by neglecting their self-interest they neglected the most basic, the highest and most all-conclusive. So that is step number one.

Step number two we find on the next page. Here he argues in the first paragraph (because we cannot read everything, I will give a brief summary)[16] as follows. We know now we are obliged to think first of all and most of all of our dear selves, our own selves. And now the question arises: But maybe we are mistaken regarding our self-interest. We may be fools. It is not so easy to know what is in your interest. In this case one could say: Well, as sensible people we ought to be subject to the judgment of a man wiser than ourselves. And here Locke gives this answer, in the middle of the paragraph: No one *can* be the equitable and just estimator of another man's advantage or benefit. Everyone must be the judge, because you may be a very great fool but you have a much greater interest in *your* self-interest than the

[xxxiv] Strauss no doubt has in mind *Second Treatise*, sec. 34: "God gave the world . . . to the use of the industrious and rational—and labour was to be his title to it—not to the fancy or covetousness of the quarrelsome and contentious."
[xxxv] *Essays*, 205.
[xxxvi] That is on 209.

wisest man in the world can have. That is the famous Hobbean argument, which Locke takes over. Now what follows from that, that I am by nature, by natural law, bound to think of nothing but my own interest as I see that interest? Let us make one assumption, which Locke makes, which is not altogether unrealistic: that most men think of their immediate interest, [and] do not think ahead. Then it follows that these people, the majority of men, have no higher duty than to think of their immediate advantage. What follows from that? If you have to think only of your immediate advantage and every other consideration must be subordinate, what follows from that regarding human relations?

Student: War?

LS: War of everybody against everybody. That follows as sure as anything. Now that is the first point which Locke makes in the central argument, on page 211. But then he makes an interesting switch, again a very clever move. The war of everybody follows with necessity and obviously if everyone thinks and must think of nothing but his immediate advantage. Now Locke takes a step back and drops the immediate advantage and speaks of advantage simply. Now let us call this, to make the thing clear, the long-range interest. If all men would think of their long-range interest, they would not grab everything as they like it, but they would think of the consequences of the war and the unpleasantness of constant war of everybody against everybody. People thinking of their long-range interest, as Hobbes put it, or almost put it, would think of peace and say, "The most urgent thing is to have public peace. Then we can think of our immediate advantage to the extent that it is necessary." What does Locke say to this point, which ultimately he admits, but he makes it in a roundabout way because he wants to bring out another lesson? What does he say in this passage? He says, "If all men follow their private long-range interest, there follows *not* peace, but war." How come? Let us read the beginning of this paragraph on page 211.

Reader:
Secondly, it is impossible that the primary law of nature is such that its violation is unavoidable. Yet, if the private interest of each person is the basis of that law, the law will inevitably be broken, because it is impossible to have regard for the interests of all at one and the same time. In point of fact, the inheritance of the whole of mankind is always one and the same, and it does not grow in proportion to the number of people born. Nature has thus provided[xxxvii] a certain profusion of goods for the use and convenience of men, and the things provided have been bestowed in a definite way and in a predetermined quantity; they have not been fortuitously produced nor are they increasing in proportion with what men need or covet. Clothes are not born with us, nor do men, like tortoises, possess and carry about shelters that have originated with them and are growing up together with them. Whenever either the desire or the need of property increases among men, there is no extension, then and there, of the world's limits.[xxxviii]

LS: Up to this point, you see, he links all the time desire—which means there avarice and greed—and need. But morally the case of the two things is always very different. We will concentrate on the more serious case, namely, the necessity. What Locke says here is this. There was enough around available for men at the beginning when the population of the earth was small. But then the number of men grew. The need is now for much more. This need is an additional need; it is not fulfilled by nature. What is the consequence? War. There is too

[xxxvii] In the original: "Nature has provided"
[xxxviii] *Essays*, 211.

little to be sufficient for all, and therefore men must fight. So it is not only immediate, foolishly understood self-interest, but long-range interest, self-preservation, the most fundamental needs of the body for food, which are not supplied sufficiently by the stingy nature. You see here how the argument from providence comes in.[17] Mr. ——, you knew such a social science professor or a professor of economics who says that.

Student: They claim that men are determined to maximize their wealth.

LS: Well, they want to maximize, not satisfice.[xxxix] You see, I know some of that. But the main point which I want to make is this: Locke makes his point in a roundabout way, and on the face of it, it is an objection to Hobbes. Not peace is the primary issue, but food. Food—and that means, for reasons which we see in the *Treatises*, property. So in the first place, we come into the realm of the war of everybody against everybody again. How does Locke go on from here? I think we must step back and think for one moment. Granted that there can be such a scarcity of provisions at such times that an individual may be better off by fighting than by peacefully starving. That is the conflict which Locke has in mind. But generally speaking, there is a different connection, as Locke admits, of course, namely, between peace and plenty. You can work your fields better in peace than in the opposite. So this is only an extreme possibility of great importance, especially for foreign relations, by the way, as we know from the distinction between have and have-not nations and such considerations. So eventually it boils down to this, the old Hobbean argument: For self-preservation, including food supplies, peace is preferable to war with a view to self-preservation and self-interest; and therefore the requirements of peace are the requirements of natural law, as they are in Hobbes.

There are at least two passages, here on page 216 and on page 207, in which Locke emphasizes the harmony between natural law and peace on the one hand, and everybody's private interests on the other. Honesty is the best policy, but[18] from Locke's point of view, that means honesty is good *only* because it is the best policy. He presents this in a traditional guise, which we can see well.

There is however this remark about[19] the necessity of conflict, not only with a view to immediate advantage but also with a view to long-range advantage, which remains an important consideration for Locke. There is a fundamental harmony between self-interest and the public interest, but there is no complete harmony. Locke is not such an extreme individualist, to use this word, as he is frequently said to be. What is the motto of the treatise? Does anyone have it with him, the *Treatise on Civil Government*? *Salus populi suprema lex esto*: "The public safety should be the supreme law." Not the safety of the individual, that is the crucial implication. The public safety takes care of the safety of individuals, *generally speaking*, but not universally. The same characteristic difficulty, I believe, which you could already discern in Machiavelli: the public good, the public safety, the fatherland, as Machiavelli says, is the overriding consideration, but ultimately based on the self-interest of individuals with the understanding that generally and broadly speaking there is a harmony between the interest of the individual and the interest of society. But not every individual: some individuals from time to time get hurt without deserving to be hurt, and that we must take in our stride. Of course Machiavelli is so notorious a Machiavellian that no one is

[xxxix] Strauss is playfully referring to the theory of Herbert Simon that men seek to "satisfice," i.e., get enough, rather than maximize. Simon (1916-2001) was a political scientist and economist; he was the subject of an essay in the book *Essays on the Scientific Study of Politics* (New York: Holt, Rinehart, and Winston, 1962), edited by one of Strauss's students, Herbert Storing.

surprised by this assertion. In the case of Locke, who is presented as the most powerful defender of the right of the individual, it may sound strange. But if you look at the argument of the *Second Treatise* more closely, while lip service is paid to the right of every individual, the factual provision is only for the majority of citizens, which is an entirely different proposition. He says so. I do not have the *Treatises* here; I believe it is in paragraph 208 where he speaks of that. And there are other places.

"[If the manifest acts of tyranny—LS] reach no farther than some private men's cases, though they have a right to defend themselves and to recover by force what by unlawful force is taken from them, yet the right to do so will not easily engage them in a contest wherein they are sure to perish; it being as impossible for one or a few oppressed men to disturb the government, where the body of the people do not think themselves concerned in it, as for a raving madman or a heady malcontent to overturn a well-settled state, the people being as little apt to follow the one as the other."[xl]

He all but compares the resisting individual to the [mad] men. The real thing is to have an opportunity[20] for a situation which gives the majority a reasonable control of the government; and the majority is then safe, there is no possibility of a guarantee regarding justice to individuals.

Student: [Regarding][xli] the conflict between long-range self-interest and the idea of war, presumably if natural law or duties and obligations are identical with public interests, then in a state where physical scarcity is the condition, the only difference is whether the war on the one hand has more people getting killed, or in the public interest they are dying of starvation. The end effect is almost the same.

LS: Yes, but look at it from the point of view of the individual.

Student: The individual's rights are respected in the public interest, but he dies nonetheless.

LS: I am sorry, but I must make certain objections which I have learned from the TV. I have never observed it locally, but I believe that people who are extremely brutal and clever have in such situations a greater chance of survival than nicer people. So they would not be satisfied with your general remark that seventy percent of the population is going to perish. They would say: We won't belong to that seventy percent, so you can kill them. What they do would not be very nice. In other words, they can always work from statistics. You always have to think of the individual who is particularly exempt from the statistical majority [. . .

Student: But the net result would be the same: seventy percent of the population would die.

LS: But don't you think it makes a difference to the individual *who* dies, and that it creates certain sentiments, not to say attitudes, on the part of those individuals who do that? That is not an unimportant consideration, especially when we speak of morality, and not merely of statistics. The point which Locke makes and which goes through the whole book, although it comes to the surface only in these four or five passages, is this: the overall situation of man is of such a nature that he is not provided for, not taken care of. He must take care of himself. And that means conflict, fighting, and morality can come in only after these[21] certain [basic]

[xl] *Second Treatise*, sec. 208.

[xli] Brackets in the original transcript.

jobs have been taken care of by men in human government. That is the point. And always with this very great reservation: that if such a crude [necessity] arises, by natural catastrophe or in one way or another, this old terrible condition, this most uncivilized condition, will arise again. Locke is such a master of gentle and easygoing language, like a good old man who is telling a nice story [. . .] that one can easily overlook this toughness, but that toughness is there.

I can only repeat what I said at the beginning, that the proper point of view for understanding Locke—certainly his later writings, the classic ones—as I have learned earlier, is that Locke was clearly confronted with this alternative of the traditional natural law teaching: St. Thomas and Hooker on the one hand, and this attempt of Hobbes to build a natural law teaching, if you can still call it that, on the basis of self-preservation alone. And he presented to the public a doctrine which at first glance looks like a kind of modernized version of Hooker: a big modernized version of sovereignty, and rights of the individual and state of nature, etc. But then a closer look, a really precise analysis shows that Locke himself at no point believed that the basis of his edifice was the traditional natural law, which was merely a façade, but was rather something like [what] Hobbes thought. And these earlier essays he rightly did not publish, because here the self-contradictions, and the other shocking things, are so obvious that this would not have made[22] [the] impact which the *Treatise on Civil Government* did make. You know, it is a book of fifty three pages. If you contradict yourself on page 1 and page 53, you still may remember what you said on page 1. But if you take a book of—how many pages do the *Treatises* altogether have? Three hundred pages? Two hundred fifty. Well, you see you need a much better memory to keep in mind the content of two hundred fifty pages than of fifty pages. So the contradictions of Locke may of course somehow discern themselves, but not [be] taken seriously. I do not believe that this book, if it had been published by Locke, would have had the tremendous success which the *Treatises* had. There is a kind of smooth going-over of which not all readers become aware, from the very idyllic, beautiful state of nature, which is a kind of paradise and where no problems exist, to a very tough Hobbean war of everybody against everybody. That comes to the fore only much later. The corresponding contradictions are much grosser here.

Incidentally, the theological issues are of course not mentioned in the *Treatises*. They are, in fact, in the *Essay Concerning Human Understanding*, but also in very different places, much distant from each other. In this short book of fifty-three pages, you have the discussion of the natural law teaching plus the theological premise, and with such strong, glaring contradictions that this never would have had, I believe, the fame which the *Treatises* and the *Essay Concerning Human Understanding* had.

Student: As far as the status of public safety in which individual safety is concerned, might this not be a façade itself? May not this be a façade of Locke, the supremacy of the public safety over individual safety?

LS: All right, but in order to raise the suspicion, you must have a cause for it. When I had some difficulties concerning natural law teaching, I noticed some glaring contradictions which raised the question: Could an intelligent man have meant them? A great paradox. But what is self-contradictory in the proposition that the common good, crudely and massively understood, the good of the large majority, is the objective of government, and that it does not give the guarantee against occasional injustices against individuals? I am speaking not only of those things, for example, where by circumstantial evidence a man is condemned to death: harsher things. What is the difficulty in that, unless you say the notion is too crude?

Student: I wondered how you can square that with the notion that self-interest is the fundamental natural law unless you identify common interest with self-interest.

LS: But to a certain extent, is it not really necessary to do just that on very massive commonsensical grounds? Is it not true that a depression in this country, a defeat of this country, would do a very great harm, to say the least, to almost all of its members? Is it not generally speaking true that the well-being of the individual depends on the well-being of the society to which he belongs? There are exceptions, but broadly speaking, is that not so? I think that is really an old commonsensical story which is only denied by certain people who refuse to see massive things because their methods are too refined to allow the perception of the massive things. Because they would say that if some are left out, then it is no longer common good. But from a crude, practical politician's point of view, the good of the overriding majority *is* identical with the common good. For example, there are people who derive great benefits from contaminated food. Their interest is hurt by food purity laws. Hence food purity laws are as little in favor of the common good as is the [lack of such laws].[xlii] But the funny thing is that if you stand up in the market place for food purity laws you will be listened to. But if someone would stand up for contamination of food, what would happen? That is an empirical proof that there is something called the common good, that not everything can be defended. Not everything can be publicly defended.

Student: It just appeared to me[23] that there is somehow a tension between these two. If you want to pose self-interest as a fundamental law of nature, it seems to me you have a moral doctrine intended to instruct men that will empirically be conquered.

LS: In the first place, I believe—and perhaps we will have the chance to speak on that on a later occasion—it is a very poor basis for morality. But that it can within a certain region make sense and is certainly preferable to that completely blind relativism ruling today, that I still would say. You still talk about real things in the real world if you speak of men's desire to preserve themselves. There is empirical evidence for that: most people, I believe, when someone tries to shoot them, take cover. And in other things: when there are starving people, most of them try to get food—an empirical fact. And there are many other things which you could find. So there *is* something to that, and that is the major point. You can also see from this basis what the importance of food compared to other items is, and so forth. In other words, self-preservation is something real, [which] one should consider very seriously. The question is only and indeed whether that is a sufficient basis for understanding man's moral and mental life. And that, I believe, does not work out. But for many crude political purposes it is helpful. That, I believe, is also the element of truth in old-fashioned utilitarianism, which in a way [. . .]

Student: [Inaudible question to the effect that Locke has the idea of will rather than rational behavior. An element of divine will, divorced apparently from a divine intelligence.][xliii]

LS: Locke has of course dealt in part with that. Let us see what the problem is. In the first place, we have the rational [nature].[xliv] The inherent criterion that something is fit for a rational nature. And that, a rational nature can know. We call that conscience. For example,

[xlii] The transcript has a blank space here.
[xliii] As noted by the transcriber.
[xliv] The transcript has a blank space here.

that lying is mean, unbecoming, that is a rational conceit. Locke says this is not sufficient for making a law. There must be in addition a superior whose will it is that we comply with these rational conceptions, or whatever we might call them.

Student: Yes, but this ties in with the question of [. . .] Reason only needs to apply for him on the level of the few to whom the law is given.

LS: I believe I know what you are driving at, but can't you state it more precisely? I think the meaning is this. Granting that these prescriptions or counsels are wise or rational, must not an all-wise creator necessarily approve of it? You see, in my earlier statement I presented the difficulty that was a very big issue, of the [status][xlv] of god's omnipotence. The [. . .] relation between god's power is this. Must one conceive of the relation of god's wisdom and power in almost Platonic terms, that god looks, as it were, at an eternal rational order and cannot help obeying it, or is this in god himself, and therefore[24] is [god] not subject to something in a way higher than[25] [himself]? This great difficulty for the theologians was important, because it was similar to the question of the relation of omnipotence and wisdom. And Locke appeals to reason. We saw last time a few indications of where Locke alludes to that. For example, the section on Descartes's demonstration of the existence of god. He speaks of god's power and wisdom, and never of his omnipotence. In other words, I believe he wants to indicate by this that there is a certain difficulty known to him regarding the relation of omnipotence and the perfect wisdom. Does not perfect wisdom limit omnipotence, and how can we call it, then, omnipotence? You know there is the famous discussion where the old theologians admitted that the necessary limitation of omnipotence is merely and distinctly absurd, because that does not exist. But there were always more or less rationalistic theologians who enlarged that and said: If you had the choice, not between something noncontradictory and contradictory but between the wiser and the less wise, is god not [therefore] bound to choose the wise[26]? I take the later formulation of Leibniz: This world is the best of all possible worlds. Why? God must have chosen the best possible world, otherwise he would have been unkind and unwise. In other words, here, whenever the issue of omnipotence comes in tension with wisdom, difficulties arise; and therefore, in compliance with his theological susceptibilities—and I am sure that occurred among the Calvinists, and he wrote in an atmosphere where Calvinism played a considerable role—then he preferred to speak of the will. I do not know what part Calvinism plays in history,[xlvi] but I think in Locke it plays a considerable role. The difficulty comes to light the moment you make this assertion: Man recognizes god is evidently a rational [being]. Then where does god come in in this relation? If god is infinitely wise, must he not have commanded men to do that which is evidently wise? And then you have the notion of a necessity which limits god's power. Locke of course does not solve the problem by this formulation, but he conceals it verbally by speaking of the will.[xlvii]

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[1] Deleted "you."
[2] Deleted "if you."
[3] Deleted "and."
[4] Deleted "when."
[5] Deleted "posited."
[6] Deleted "an."
[7] Deleted "Page 213. I'm sorry."
[8] Deleted "have."

[xlv] The transcript has a blank space here.
[xlvi] In the transcript: [Inaudible: I do not know what part Calvinism plays in history]
[xlvii] The transcriber notes: "Rest of the discussion—questions and answers on theological points—inaudible. Locke does not give a theological solution."

[9] Deleted “societies are.”
[10] Deleted “now.”
[11] Moved “be.”
[12] Deleted “yet.”
[13] Deleted “[page 205, line 7].”
[14] Deleted “of these people was.”
[15] Deleted “Grotius, and says.”
[16] Deleted “he argues.”
[17] Deleted “Someone.”
[18] Deleted “honesty.”
[19] Deleted “the conflict.”
[20] Deleted “of.”
[21] Moved “basic.”
[22] Deleted “this.”
[23] Deleted “that if.”
[24] Moved “God.”
[25] Deleted “he.”
[26] Moved “therefore.”

On Locke's *First Treatise*, preface and chapters 1-5
Session 6: January 22, 1958

Student: . . . and then in the *Second Treatise*, in the beginning of it he starts off, "Here we have a treatise on."[i]

Leo Strauss: The beginning of the *Second Treatise*, page 121, reads as the immediate sequel. Well, of course,[ii] it wouldn't be decisive ether way. Would you say that this was part of the *First Treatise* or part of the *Second Treatise*?

Student: I had believed that in referring to *the* treatise . . .

LS: Well, we will take that up later. Now regarding this missing part, you said, if I understood you correctly, it must have dealt with the question of the relation between biblical history and the state of nature. Did I understand you correctly?

Student: Yes. In other words, that it dealt with the problems that Filmer brought up that were not strictly scriptural.

LS: Not strictly scriptural. That is the point which you emphasized. Well, I'm not so sure yet that you are right there, but at any rate, if you would say this states the relation of the state of nature[iii] and biblical history, that would be somewhat closer to what I suspect. Of course, Locke would have to take up the question whether biblical precedent is not in favor of a much more absolute monarchy than Locke would accept . . . The limitation to nonbiblical subjects, I think, which you seem to have suggested, is not warranted. But we discuss this subject later on . . . You seem to have suggested that there is an important difference between the Lockean doctrine regarding property and the biblical doctrine regarding property. Can you restate it?

Student: Well, it seems to me that in the Bible that government came about after the Fall or as a result of the Fall; property was also largely a creation which came about as a result of the Fall. Now I am not certain, and am certainly no expert on the Bible.

LS: Still, what would be the difference between Locke and the traditional biblical teaching?

Student: Well, the traditional biblical teaching did not consider that[1] absolute property that Locke talks about as coming about in the time of Noah.

LS: But what kind of property is an alternative to that, i.e., what you call the absolute property?

Student: Well, communal property.

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[i] The session begins with an exchange between Strauss and a student who would have read a paper at the start of the session.
[ii] The phrase "of course" here is uncertain. An alternative would be "actually."
[iii] The words "this states the relation of the state of nature" are uncertain.

LS: Aha! You should have stated it more clearly. I believe that he suggested that the biblical warrant is in favor of communal ownership and not for private property, and that would of course make a tremendous difference. So if that is true, then Locke would have known that his doctrine of private property, at least as elaborated later, was decidedly nonbiblical. That was the main point you made regarding this.

Well, in order to clarify these very important questions, one must of course first study the fifth chapter of the *Second Treatise*, "Of Property." But in doing that, always consider the passages of the *First Treatise* regarding property. To mention only one point: in discussing property in the first part, Locke admits a duty of charity as a kind of mortgage on property. In the *Second Treatise* he is completely silent about it. The owner of property has only rights and no duties except those imposed on him by positive law, e.g., taxes and so on. But the duty of charity is completely omitted. Now in case of attacks, Locke could always say: "But I spoke of it in the *First Treatise*." And you have to make your choice whether you regard the *First Treatise* only as an introductory treatise of a merely polemical intent, whereas the second contains the positive teaching. This would lead to a very long lawsuit which Locke would win by sheer persistence, of which he has given beautiful examples in his theological writing.

You know it is customary now to read only the *Second Treatise* in present-day political science and philosophy departments. I believe you could prove that even by looking at what is being done in the readings prepared for such courses, [the] readers in political theory; I would assume that all the clippings are made from the *Second Treatise*. This is the common view. The *Second Treatise* was of course the one that had the most telling effect, especially afterward, i.e., the eighteenth century, there is no question about this. But that does not justify the neglect.

Student: I had a slight difficulty with respect to Locke's comment on the question of holding an excess of goods with respect to a needy brother. On page 34,[2] end of the third line, "so that it cannot be justly denied him when his pressing want calls for it"; and then later on he states that charity . . . This might present a difficulty. It seems that there might be a distinction between justice and charity.

LS: Because later on he makes the distinction between justice and charity? In other words, you would confirm what has been said?[3]

Student: Well, it seems to be contradictory to him, if Locke understands all meaning in the distinction between justice and charity. In the first sentence, he says it is a duty of justice in some way to give to your brother, not a duty of Christian charity. It puts it on a different basis.

LS: I see. Let us wait until we come to that.[4] I want to make now only a very general remark. But even if one studies only the *Second Treatise*, as is the common practice today, one comes across difficulties which necessarily force one beyond the *Second Treatise*. The main point, to mention only one very striking thing, is this. The state of nature is presented in two contradictory ways: first, as a state of peace and harmony, a kind of early, idyllic society; and then gradually the state of nature proves to be not different from Hobbes's war of everybody against everybody—except that Locke doesn't write in flashy colors which Hobbes used, but in substance it is the same thing. On the first level of interpretation, it appears somehow that Locke combined the Hobbean doctrine of the state of nature as the right to self-preservation

with the traditional natural law teaching, say, roughly Thomistic, and that he did it in a very muddleheaded way. But today historians don't mind muddleheadedness at all; they regard it as a sign of genius, which, of course, has very good effects on all levels of higher education. If the greatest men did nothing but contradict themselves, even on the same page, why should not a young student be allowed to do the same? Perhaps one should draw the attention of the people now concerned with the Sputnik and so on that scholarship also has a certain responsibility, not only the Deweyan instrumentalist pedagogy.

To turn to our earlier point, the difficulties of the *Second Treatise* are so great that one has to read the *First Treatise* to find some clarity. And one has to go even beyond the *First Treatise*: one has to read at least a few sections of the *Essay Concerning Human Understanding* dealing with morality and, above all, as I have found out to my great surprise not so many years ago, one has to read his theological writings, especially the *Reasonableness of Christianity* and the *Vindication of the Reasonableness of Christianity*.[iv] And then one arrives, I believe, at a perfectly clear picture of what Locke really wanted and what he thought. The *Reasonableness of Christianity* is especially important for this reason: in every article or book on Locke, I believe, at least in all those which I have read, you find references to Locke's caution. I mean, when people speak about Hobbes or about Hegel or about Plato and Aristotle, they don't call them cautious, but in the case of Locke this expression invariably occurs. So he must have had a caution of a peculiar kind, because in another way Aristotle was of course extremely cautious but not cautious in the way in which Locke was cautious. At any rate, in the *Reasonableness of Christianity* you have a long discussion of the subject of caution which leads up to the responsibility of a public teacher or writer. And once you consider that, i.e., that Locke has certain very definite principles as to how a writer has to proceed,[5] [you will see] that this is perfectly compatible, as Locke makes clear,[6] [with] contradicting[7] [oneself]. In other words, it is better to contradict oneself than to say certain things which one shouldn't say. Then you see that self-contradiction can be compatible with a complete absence of muddleheadedness, namely, if the contradictions are conscious or deliberate.

But I must say, on the other hand, that this observation that Locke was a very deliberate writer has not been taken seriously enough, in particular, not by myself. In the meantime some younger men have made some observations; for example, Richard Cox at Berkeley, who is now publishing a book on Locke's theory of foreign relations, took the trouble of comparing every quotation occurring in Locke, from Hooker or anyone else, with the context. I did this in only one or two cases, whereas he did it systematically.[v] Some very interesting things come to sight, namely, the things which Locke drops which occur in Hooker[8]; immediately the thing becomes much clearer than it was heretofore. And there are many other things to observe. For example, just before this class, Mr. Cropsey[vi] had the goodness to

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[iv] For what follows, see *Natural Right and History*, 206-9. Locke's *Reasonableness of Christianity*, as well as his *Vindication of the Reasonableness of Christianity*, and *Second Vindication of Christianity* (1695) can be found in *Works*, vol. 6.

[v] R. H. Cox, *Locke on War and Peace* (Oxford: Clarendon, 1960). Richard Cox (1925-2015), a student of Strauss's, spent most of his career teaching political philosophy at SUNY-Buffalo. The book is based on his dissertation.

[vi] Professor Joseph Cropsey (1919-2012) was Strauss's colleague in the department of political science from 1958 until Strauss's retirement in 1967. With Strauss he co-edited the *History of Political Philosophy* (Chicago: Rand McNally, 1962, 1972; University of Chicago Press, 1987) and served, after Strauss's death in 1973, as his literary executor. Cropsey was also the author of several books, including *Political Philosophy and the Issues of Politics* (Chicago: University of Chicago

tell me—you see how superficial we all are—that the *First Treatise* is called *A Treatise of Government*; the *Second Treatise* is called *A Treatise of Civil Government* . . . [vii] I will try later to explain the significance of this, because I think it makes sense. In the case of Locke, you cannot do what you can do in the case of almost every writer today, that is, to assume that he just didn't think; that when he wrote the first title, this title came to mind, and when he wrote the second title, the other came to his mind. "We must not assume that he had any thought," runs the argument here, "because today printing and rushing into print is so encouraged." Some young people grow up in the belief that their earthly felicity will depend entirely on the speed in which they run into print: a very bad habit. That was absent in Locke, we can be sure, since it was pointed out that he was almost sixty when he published. I don't know whether he did not publish a little before, but hardly anything of note. Now let us turn, then, to the *First Treatise*, and let us consider the situation.

Filmer was the most famous representative of the school called "the divine right of kings," which antedated Filmer by some generations and came up as a consequence of the Reformation. Figgis, in his book on the divine right of kings[viii]—one of the few historical books which I believe can really be said to have solved the historical problem[9]—suggests this formula: that the Protestants were compelled, because of the break with the church of Rome, to ascribe to the head of their church, i.e., the king, the prince, that plenitude of power which according to the Catholic doctrine belongs to the pope, so that the divine right of kings, as it were, is the divine right of the pope but now ascribed to the king. As a consequence, now secular and temporal power are united. Filmer, at any rate, was the most famous representative of these men, certainly in England. His doctrine is allegedly scriptural, chiefly scriptural. There can be no popular election of kings, governmental authority does not have its source in the people, kings are appointed ultimately by a divine appointment, and hereditary right is a necessary implication of it. The succession may be altered by divine or prophetic interference. Now that is substantially the situation in the Old Testament, as you know. Now in the New Testament the crucial passage is "Give to God what is God's and to Caesar what is Caesar's," together with "Be subject to the higher powers."[ix] These two principles are not incompatible, of course, with absolute monarchy. There is no provision in the Bible, both Old and New Testament, for popular control of government. There is provision for control by prophets and so on, not for popular control—certainly [not for] "no taxation without representation"; that is clear.

Therefore there is from the outset a certain tension, not only between Filmer's doctrine but between the biblical support for Filmer's doctrine and Locke's political thought. Another factor enters. The biblical doctrine had been elaborated theoretically, and in this process modified, in scholasticism. According to this later scholastic doctrine, to which Filmer refers, the governmental authority has its root in the people, we can say. The scholastic doctrine is much nearer to Locke, of course, than not only Filmer but[10] the biblical doctrine proper or literally understood, because here in the scholastic doctrine the principle that all authority arises from the people in a sense, in an important sense, was recognized, and this was never stated, was not an explicit biblical doctrine in any way. To put this graphically: we have

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Press, 1977), and *Plato's World*. *Man's Place in the Cosmos* (Chicago: University of Chicago Press, 1995).

[vii] On this issue, see Laslett's note in *Two Treatises of Government*, ed. Peter Laslett, student edition (Cambridge: Cambridge University Press, 1988), 266.

[viii] John Neville Figgis, *The Divine Right of Kings* (Cambridge: Cambridge University Press, 1914). First published in 1896 as *The Theory of the Divine Right of Kings*.

[ix] See Matthew 22:21, Mark 12:17, Luke 20:25 and Romans 13:1.

Filmer, and at the opposite pole we have Locke. In between is the scholastic position. And both Filmer and the scholastic position are in different ways [related] to the Bible. They interpret the biblical teaching differently. Now Locke, as I say, is obviously much closer to the scholastic teaching. But one thing had happened, which of course no one knew until three years ago—namely, when the early essays which we have discussed became available—that Locke had from the very beginning clearly broken with the scholastic doctrine and with its elaborated natural law doctrine. While Filmer of course referred also to the natural law doctrine, it was a very sketchy and uninteresting treatment; the main point of Filmer's political doctrine was biblical or supernatural and not natural law doctrine.

So this was the general situation in which Locke approached the problem. Now in the *Treatises* of 1690, Locke attacks in the first place what we can call this silly extremism of Filmer, by which I do not preclude that in some cases he may have the better of Locke. It is on the whole a very silly position, e.g., where you have to give this divine right to every usurper as well as to the legitimate king. But in attacking the silly extremism of Filmer, Locke surreptitiously lays the basis for his novel political doctrine. At the beginning of [the *Second*] *Treatise*[11] the foundations have already been laid, have been made clear. The refutation of Filmer is tantamount to establishing Locke's foundations. And that explains the great difficulty[12] of the first chapter of the *Second Treatise*, where people say: "How does he know all these things?"—e.g., that men are by nature free and equal and so on. Locke's answer would be this: I have proved this in the first part. The alternative is either men are by nature unequal—then Filmer is right, because everyone else including the scholastics and the royalists admitted that man is by nature free and equal. And no one discussed absolutely far-fetched alternatives which had no practical meaning. That Aristotle had said in classical antiquity that men are by nature unequal was not a practical proposition of any importance in Locke's time. And since the book is a practical book, he leaves it at the practical alternatives. Just who would today discuss in political seriousness the possibilities of a hereditary nobility in good conscience?[x] That is not a practical problem. Just as today the discussion is necessarily limited by the fact that you have liberal democracy and communism, and all other possibilities do not enter the political scene and are therefore justly treated as less important, the same [was true] in Locke's time. Either you were a Tory,[xi] e.g., Filmer, or you were an adherent of the Settlement of 1688; and in the latter case you accepted, of course, the social compact with its premise, i.e., the natural freedom and equality of man. Locke proceeds as follows. He refutes Filmer, and by this he establishes his foundation. He bypasses the scholastic position. There is no discussion of the scholastic position in the *Two Treatises*. You find an equivalent of that of course in the *Essay Concerning Human Understanding*, with which I am not now concerned. Therefore, by doing that Locke is now confronted directly with Filmer, and since Filmer's authority is chiefly biblical—or, rather, as Locke emphasizes, is exclusively biblical—Locke is confronted directly with the biblical teaching regarding politics. He is confronted with the biblical teaching not interpreted, mitigated, modified, or however you call it by the traditional scholastic interpretation. Therefore his critique of Filmer must somehow take care of the biblical political teaching, which does not obviously favor what we can loosely call popular sovereignty. Locke is concerned with establishing something we may provisionally call a popular sovereignty.

There are three levels, I would say. The first is the critique of the argument of Filmer, which is obvious. The second, which is in a way a part of the first but which should be

[x] The word "conscience" here is uncertain.
[xi] The word "Tory" here is uncertain.

distinguished, is Locke's interpretation of scripture. He cannot meet Filmer's argument without interpreting scripture. Locke, as it were, must bring about a harmony between scripture and his own teaching. The third level, which is in a way the most important but also the least accessible, is a critique of scripture itself. A critique of scripture existed and was even published at that time. That can easily be shown: it suffices to refer to Hobbes's *Leviathan*, chapter 31, following, where Hobbes gives a criticism of scriptural authority, and in 1670 Spinoza had published his *Theologico-Political Treatise*, so these things were already voiced. Locke of course, being cautious, would not voice them as such.

Let us turn now to the titles of the *Two Treatises*. The first *Treatise* is called the *First Treatise of Government*, the second the *Second Treatise of Civil Government* . . . This does not exclude that there might be one edition brought out by Locke himself in which that is missing. That you can never tell, because Locke may have changed his book from one edition to another. But let us take this text which we have. How can you explain it? What is the difference between "of government" and "of civil government"?

Student: Well, in a sense, wouldn't his first discussion be concerned with divine government, concerning scripture and that, especially when God had a great part to do . . .

LS: But let us proceed . . . What is the relation between government and civil government—the formal, external relation?

Student: "Government" is more [general].[xii]

LS: More general. That is obvious. There may be a government which is not civil government. What is that, also in the most obvious sense?

Student: Divine.

LS: But on earth. I mean the most obvious way.

Student: Ecclesiastical.

LS: Ecclesiastical government. Perhaps also divine government, but let us speak now of ecclesiastical government. What is the subject[13] of Filmer's book? The government of Adam in the first place, and of the Patriarchs. Was the government of Adam and the Patriarchs civil government pure and simple?

Student: It was civil and ecclesiastical combined.

LS: Christians always spoke of the church of the Bible, of the Old Testament. That was clear. So there is nothing surprising about that. But the difference of titles indicates to us what is not so clear when we read that, that Locke had this broader problem in mind. While Filmer, if I remember well, doesn't say a word about any ecclesiastical government which Adam had, in fact he must have meant it. The government was so complete and so all-embracing, just as that of the king of England in his time: he was both the Defender of the Faith, the head of the church, and the secular governor. And therefore it makes absolute sense. This difference of titles may also have to do with other things, but that is the most obvious thing . . .

[xii] In the transcript: "(accepted ?)"

Now if we turn to the preface, it was observed that Locke emphasizes in a strange way the fact, which could be of no interest to anyone except Locke himself, that a part of this book has disappeared. And he even has the impudence to say that it is not even worthwhile to tell this . . . He speaks of that fate which has "otherwise disposed of the papers that should have filled up the middle, and were more than all the rest," and indicates that "it is not worth while to tell thee."[xiii] It is a pity to know this—rather, it is a pity we don't know this about the fate, but we would be much more interested in the content. And he is also somewhat evasive about the content. Let us read the next sentence after that.

Reader:
These which remain, I hope, are sufficient to establish the throne of our great restorer, our present King William—[xiv]

LS: [14]One inference can be drawn immediately from that. It is really obvious. Who are "we": "our great restorer"?

Student: That would be the English people.

LS: That is trivial but not unimportant. By no means. That is a book by an Englishman for Englishmen. It is not a simply theoretical book.

Student: That is, what remains of it.

LS: That is true. I apologize. But still, what remains is the only thing which we can possibly read. But still you are quite right; to the extent to which we guess about the missing middle we have to consider that it may not be only for Englishmen. That is absolutely correct. Now let us read the sequel.

Reader:
to make good his title in the consent of the people, which, being our only one of all lawful governments, he has more fully and clearly than any prince in Christendom—[xv]

LS: Can you explain that? King William has his title in the consent of the people. That is clear, but what is the sequel? What does that mean? What does it mean, "being our only one of all lawful governments"? That is not an insincere teacher's question. I'm really bewildered and I don't know what it means. I would understand it to mean that our government is the only lawful government in the world which has this title in the consent of the people. Is this grammatically possible? Well, that leads to a very great and important inference.

Student: I think it could also be read that it means our only one out of all lawful governments.

[xiii] *Two Treatises of Government*, ed. Thomas I. Cook (New York: Hafner, 1947), preface, 3.
[xiv] *Treatises*, preface, 3.
[xv] *Treatises*, preface, 3. It should be noted that whereas the Hafner edition has "our only one" (as does the text of the *Treatises* printed in *Works*, vol. 4 [1824]), the definitive sixth edition of 1764 (reprinted by Laslett in the Cambridge edition) has "the only one." This is of some relevance to the discussion that follows.

LS: Yes, but would it not amount to the same thing, that our government is the only one among all lawful governments, the title of which is in the consent of the people? Or did you mean something else?

Student: That would mean that there are other lawful governments.

LS: Of course, that he means under all circumstances. That is what I am driving at, that Locke here says in the preface: a government may be lawful without having its title in the consent of the people. And that is a terrific thing, because you will see later on the consent of the people is made *the* sole title. Perhaps Locke understood something different by this, i.e., consent of the people. You have doubts?

Student: Well, the only doubt I have is that it seems to be out of order somehow. He says, "to make good his title": *his* title, the king's title, is it not? He continues: "in the consent of the people, which being our only one of all lawful governments, *he* has more fully." That makes "being our only one" very ambiguous.

LS: Yes, that is Locke's hobby. All right, let us then take the first and second part. The "title in the consent of the people . . . he has more fully and clearly than any prince in Christendom." That means that if the consent of the people is a good title, then he has it more fully and clearly than any prince in Christendom. This, by the way, is also ambiguous, because if you speak of two bad men and say that one is superior to the other, that doesn't mean much. If he has more fully the title, that doesn't mean in itself that he has the title simply, in addition. So the ambiguity is not limited to the point which you make . . . Surely. That is clear. But let us now come to the crucial middle of this passage: "being our only one of all lawful governments." Can you suggest an alternative to the one which was suggested, namely, that a government may be lawful without having its title in the consent of the people?

Student: "Our only one": our only title "of all lawful governments": for a lawful government.[xvi]

LS: What does it mean to say "our only title to being a lawful government"?

Student: That is what I had in mind.

LS: Let us see.

Student: I think perhaps he means his title, he being the only person to have a proper title, and perhaps is contrasting explicit consent with tacit consent—the old distinction between these two. Then he is saying that at this particular time King William is the only king around who has one of these explicit . . .

LS: That is a way in which he could say the king of France also has a legitimate title but not in this . . . That is very good. That is what I thought. But still,[15] here he doesn't make the distinction, and therefore it seems to me he created an impression. Or you can also say he speaks very popular[ly] in the preface and takes the popular notion. The French king has his

[xvi] In the transcript: "our only one" [our only title] "of all lawful governments" [for a lawful government]

title by inheritance. King William has a very poor title from the point of view of inheritance, because he himself didn't have any title . . . It seems to me that it is at least suggested that there can be a lawful government, the title of which is not the consent of the people. And that is very strange for a book the chief thesis of which is [that] the legitimacy of all governments rests in the consent of the people. If you want to speak ambiguously about consent, the preface to a book devoted to consent is not the best place for it.

Student: It seems to me it depends on the ambiguous use of "our." Up above he uses it to refer to the English people, and his *Treatises* are written to vindicate a revolution, in a sense, and yet the *Treatises* don't deal just with the people of England. They are a sort of universal doctrine. It seems to me that the "our" here could easily mean "man's." You could substitute here "being man's only one of all lawful governments, he has more fully and clearly than any prince in Christendom." In other words, the "our" could mean all men instead of just Englishmen.

LS: All right. Then restate that sentence, sticking as closely as possible to Locke's text, and insert your interpretation.

Student: "King William has made good his title in the consent of the people, which, being man's only one of all lawful governments, he has more fully and clearly than any prince in Christendom." . . . In other words, there is only one form of lawful government, and King William has title to this form of lawful government more clearly than any other country.

LS: I see. But can one say that mankind has a title to lawful government?

Student: Well, if we substitute "Englishmen" for "mankind," we say that Englishmen have a lawful title to government.

LS: That is true. But at any rate, the sentence is ambiguous. And I would say that to use "our" in two lines, in entirely different meanings, without drawing attention to it is also a very bad procedure, which can be tolerated only if it serves a more serious purpose.

Student: He couldn't be referring, in "to make good his title in the consent of the people, which being our only one of all lawful governments," the "our" still referring to the English people, to lawful governments being more than monarchy, e.g., republics and so on, but the monarchy belonging exclusively to England. Then of all monarchs . . .

LS: But "of all lawful governments." Then you would have to say that the subject of this sentence, "which being," is the king. And that would be very strange. You see that this is really an awkward construction, and I can only say that Locke here has not taken the precaution to exclude the interpretation that there could be lawful governments whose title is not in the consent of the people. And that, I think, stands.

Student: I was thinking the whole thing could apply to England strictly, and that there could also be other lawful governments in England, but that this is the only one we have . . . It is conceivable that there would be other lawful governments in England, but this is our only one, in the sense that this is what we have at the moment, and it is lawful.

LS: I see. In other words, we have two governments in claim, William and James II.

Student: Or even that there are other forms of lawful government; not simply under James II, but any other form of lawful government.

LS: I must say I believe this makes it more confused. But let us leave it at that. But you see it is very strange, and it throws some light, I believe, on what he says in grammatically less complicated sentences about the fate of the middle. There he does not use ambiguous sentences; he does it another way. Let us return to the text.

Reader:
For I imagine that I shall have neither the time nor inclination to repeat my pains and fill up the wanting part of my answer—

LS: So the missing part must refer to Sir Robert Filmer.

Reader:
by tracing Sir Robert again through all the windings and obscurities which are to be met with in the several branches of his wonderful system.[xvii]

LS: That[xviii] of course has the old-fashioned meaning and not the present meaning. Now later on:

Reader:
For if any one will be at the pains himself, in those parts which are here untouched, to strip Sir Robert's discourses of the flourish of doubtful expressions—[xix]

LS: In other words, he suggests that those parts of Sir Robert's discourses—but this brings us beyond the *Patriarcha*. We would have to look at the other works of Filmer and see which parts of the argument have not been touched by Locke. They would probably have been dealt with in this missing part. Still, on the basis of the argument we had with the writer of today's report, I would draw your attention to the following fact. On the bottom of this page he says: "I should not speak so plainly of a gentleman, long since past answering, had not the pulpit, of late years, publicly owned his doctrine and made it the current divinity of the times."[xx] One more reference, on the same page, line 19: "to complain of the 'drum ecclesiastic.'"[xxi]

So in other words, Locke makes it quite clear that Filmer was preached up by the clergy, by the Tory clergy, and therefore the ecclesiastical background of the whole problem becomes . . . and perhaps also therefore the missing part and its content become somewhat clearer. Let us now turn to the text. Chapter 1, the first sentence.

Reader:
Slavery is so vile and miserable an estate of man, and so directly opposite to the generous temper and courage of our nation, that it is hardly to be conceived that an Englishman, much less a gentleman, should plead for it.[xxii]

[xvii] *Treatises*, preface, 3.
[xviii] That is, the word "wonderful."
[xix] *Treatises*, preface, 3.
[xx] *Treatises*, preface, 3-4.
[xxi] *Treatises*, preface, 4.
[xxii] *First Treatise*, sec. 1.

LS: Let us leave it at that. I emphasize the trivial thing—although it cannot be emphasized too often—that that is a value judgment. Even if we disregard the application to Englishmen in particular, in view of the beginning, i.e., "Slavery is so vile and miserable an estate of *man*," Locke does not argue that or try to prove it. Why does he not try to prove it, as he would be demanded today?

Student: I would suspect that in England everyone would consider slavery a vile and miserable—at this time—state of man. Filmer would never have argued for slavery.

LS: But still, let us stick to this point. If a scientist today would say, "Cancer is a terrible disease," would he be accused of making an unwarranted value judgment? By some fanatics, perhaps. Anyone who knows what it is to be a slave will say it is a vile and miserable estate. Some people might say it is not the worst misfortune which can befall a man; that's a different proposition. But no one would deny the first. So there is no need to get excited about it, and he simply, in a perfectly rational and sensible manner, makes the statement. It would have been extremely easy for Locke, as well as any among them who knew, to substantiate this value judgment. Let us leave it at this brief reminder of something else.

There is a difficult passage in the second paragraph where Locke first says that the book of Filmer is absolute nonsense, and then he excuses himself for these harsh words . . . that he might have taken "too much liberty in speaking so freely of a man who is a great champion of absolute power," and so on. And then he says:

"I beseech him to make this small allowance for once to one who, even after the reading of Sir Robert's book, cannot but think himself, as the laws allow him, a freeman; and I know no fault it is to do so, unless any one better skilled in the fate of it than I, should have it revealed to him that this treatise, which has lain dormant so long, was, when it appeared in the world, to carry, by strength of its arguments, all liberty out of it; and that from thenceforth our author's short model was to be the pattern in the mount and the perfect standard of politics for the future."[xxiii]

You see, Locke's book has a fate, and Filmer's book has a fate. The fate of Filmer's book was that it was published twenty-seven years or so after it was written. But what does Locke here really say? He has said that Filmer's book is of no worth, *unless* "any one better skilled in the fate of it [Filmer's book, I take it —LS] than I should have it revealed to him that this treatise [of Filmer—LS] was to carry by the strength of its arguments all liberty out of" the world. What does that mean? Someone will understand it at first reading. Filmer's argument is extremely poor, and that everyone is free to state unless any one better skilled in the fate of it. By this he cannot possibly refer to the fact that it was buried for twenty-seven years until it was published. What can he mean by that? Let us look at the sequel. Let us assume that there is a revelation[xxiv] to this effect: that Filmer's treatise, the arguments of which are very poor, are to carry by the strength of its argument all liberty out of the world. The arguments are poor unless there is a revelation to that effect, that the arguments are strong. Then Locke would have been silent. In other words, if revelation, if the status of a revealed book were claimed for Filmer, then and only then would Locke be . . . It is a strange remark. You see here that he also says "the laws allow him," and in the next paragraph[xxv] he refers to the laws,

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[xxiii] *First Treatise*, sec. 2.
[xxiv] In the transcript: "revelation (?)"
[xxv] *First Treatise*, sec. 3.

and he draws the attention of the reader to the fact that Filmer's principles would make questionable every established order. Locke appeals to the laws everywhere and in particular, of course, to the laws of England. He appeals to them against Filmer. The argument today would be this way. Someone would set forth a certain theory and someone would appeal in this country to the United States Constitution. This is of course a perfectly legitimate political argument. In the same way, Locke appeals to law—English law in the first place, and to law in general—in order to criticize Filmer's argument, that is, Filmer's book. Such an argument, i.e., an argument appealing to the law, the constitution, is of course never a theoretical argument proper but it is always necessarily a political, practical argument. We cannot dwell on every subtlety, and we will now turn to the second chapter[16].

The argument itself is extremely simple, but I limit myself to certain[xxvi] passages. He says here—in the middle of the page, where the note 4 is indicated, Filmer tells us that the authority of princes is "unlimited and unlimitable." Now if you look at the note, you see that Filmer doesn't say a word [to the effect] that they are unlimitable, except in a limited way, namely, by no inferior power of man. To say unlimitable without qualification would mean of course also unlimitable by God. Why could this be? What could he mean by that? The term occurs again somewhat later. Why is the kingly or fatherly authority unlimitable, even[17] by God?

Student: It could only be unlimitable if there were no higher authority, if there were no God.

LS: No. But what could he possibly mean by that?

Student: If it's unlimited, couldn't he prescribe what manner of worship [could be practiced][xxvii] by those who are under his control.

LS: I see. Every worship of any subject of his would have to go through his approval. Yes, that could be it.

Student: You could also mean by "unlimitable" that no one has the right to limit it.

LS: Sure, that is the same meaning. But the question is that whereas Filmer speaks of no inferior power of man limiting it, Locke simply says unlimitable; therefore he includes every being. A possible interpretation is this. Part of Filmer's argument is based on natural law, and Filmer contends that the power of the father is by natural law *unlimited*. Now if one makes the assumption that the natural law is absolutely unchangeable, even by God, then of course the power of the father would be not only in fact unlimited but simply unlimitable. On this premise it would make sense.

In paragraph 8 there is a remarkable passage. You see we have here a number of quotations from Filmer, and later on from Bodin through Filmer. Now these quotations are meant to show, to illustrate, Filmer's notion of paternal power. At the end of these quotations you find one sentence—and that is, incidentally, the central quotation, if you count all the quotations together—on page 12: "Kings are above the law."[xxviii] Now all these statements are meant to illustrate not only Filmer's doctrine but also the atrocious character of Filmer's doctrine. Now

[xxvi] In the transcript: "certain (?)"
[xxvii] In the original transcript: "indistinct."
[xxviii] In the original: "Kings are above the laws."

what is Locke's view regarding kingly powers and their relation to law? In these early essays[18] you find this passage: "Princes in whose power it is to make or remake laws at their will [and as the masters of others] to do everything in favor of their own dominion, are not and cannot be bound either by their own or by other people's positive law."[xxix]

Are kings above the law according to the *Treatises of Government*, above the positive law? And here of course Filmer meant kings are above the positive law.

Student: No.

LS: Who makes the laws?

Student: Well, under certain circumstances they are.

LS: Which are these circumstances?

Student: On occasions of public safety, on occasions where the legislature would not be assembled. Generally under unusual conditions.

LS: I understand how you get the impression, but you are wrong. Locke makes it quite clear that the people can place the legislature also in the hands of one man, so that the legislator is one man. That he doesn't think is a bright idea, but it is as legitimate as to put it into the hands of an assembly. Now this legislator–king is of course above the laws in the sense that he who can make the laws can also unmake them according to his discretion. The only qualification which Locke makes is that the government, the king or the assembly, must rule by standing laws. But the laws can be changed. The king may always rule by standing laws and not by arbitrary decrees, and yet rightly be said to be above the laws insofar as he can change them as he sees fit. So there is nothing . . . I mention[19] only in passing that this statement, i.e., kings are above the laws, is by no means opposed to Locke's teaching if it is understood that kings are above the positive laws. We come to that later. The myth regarding Locke I can caricature as follows. The twentieth-century interpretation of the American states' constitution:[xxx] that is what Locke's doctrine is, the American Constitution as interpreted by a New Deal Supreme Court. That is said to be Locke's view. That is wrong. Locke had something to do with the United States Constitution as it was originally meant, but it is not identical with that. Locke, as we will find out when we come to the second part, is as good an example as any other to point this out.

The main point of this chapter is that[20] Filmer asserted in a very unclear way that the power of fathers or kings is unlimited. But he didn't give any reason why this fatherly power is necessary, and that is the point he will take up in the sequel, the third chapter, to which we will turn now. Filmer has said that the natural freedom of man cannot be proposed without the denial of the creation of Adam, and Locke disposes of that very quickly by indicating that the lion, too, was created, and thus for the same reason the lion could be regarded as the ruler of everything. Therefore, mere creation as such does not establish any power of government.

[xxix] *Essays on the Law of Nature*, 119. Translation slightly modified by Strauss. The Latin reads: "*Cum enim principes, quos penes est leges pro libitu suo figere vel refigere et pro imperio suo omnia agere aliorum domini, nec suis nec aliorum positivis legibus astricti sint . . .* " We have added "and as the masters of others" here to fill the ellipsis in the transcript.

[xxx] Strauss appears to mean the Constitution of the United States.

Therefore the question is not creation but appointment, as Filmer also says in some passages. Do you have a question?

Student: I was just going to ask you: What about the fact that the lion was not created in the image of God, while man was created in the image of God?

LS: That's a good point. But would even that give Adam a right to rule all men, the mere fact that Adam was created in the image of God? Would this make him the ruler of all other beings created in the image of God? There would have to be some appointment, as Filmer and Locke call it.

Student: Well, it could be an appointment, by Filmer's argument, by parenthood. In other words, if God had created Adam to become a father and in becoming a father he would care for the children.

LS: Then you would still have to prove that the paternal right which Adam had included the right to rule his whole posterity in every respect, even after he has grown to adulthood and so on. The mere creation wouldn't do it. The mere fact that Adam was created, or even created as the first man, would not give him such rights. I think we must turn to this passage. Now what does Locke say here? God's appointment could mean three things[21]: "whatsoever providence orders, or the law of nature directs, or positive revelation declares, may be said to be by God's appointment."[xxxi]

And Locke's conclusion is that God's appointment here could only mean God's revealed positive grant made to Adam[22]. Everything turns therefore on this biblical passage—[xxxii] "And God blessed them and God said unto them, be fruitful and multiply, and replenish the earth, and subdue it, and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth."[xxxiii]

From this passage, according to Locke, Filmer drew the conclusion that Adam is the sole proprietor, and therefore the sole monarch, of all his posterity, with the implication that after his death the oldest heir would always be the sole proprietor and the sole monarch. Locke argues with some sense that nothing of the kind is said in these words. But we have to consider the sequel. Or is there any difficulty in Locke's argument up to this point that Genesis 1:28 does not justify Filmer's claim? Well, let us turn to the next chapter, which is the detailed discussion of that verse, "Of Adam's Title to Sovereignty by Donation."[23] On page 22 he quotes the verse. Let us first read paragraph 24 to see what Locke's general contention regarding the verse is.

Reader:
Firstly, That by this grant (Gen. i. 28) God gave no immediate power to Adam over men, over his children—over those of his own species; and so he was not made ruler or "monarch" by this charter.[xxxiv]

LS: The charter speaks only of a rule of Adam or of man over irrational animals, obviously.

[xxxi] *First Treatise*, sec. 16.
[xxxii] There is a break in the tape at this point.
[xxxiii] Gen. 1:28, quoted at *First Treatise*, sec. 23.
[xxxiv] *First Treatise*, sec. 24.

Reader:
That by this grant God gave him not private dominion over the inferior creatures but right in common with all mankind, so neither was he monarch upon the account of the property here given him.[xxxv]

LS: This point would be crucially important: that divine appointment was of common ownership of the earth by all men, not of private property as such. But we will come to this later. Now Locke establishes first the principle, "since all positive grants convey no more than the express words they are made in will carry."[xxxvi] Now what do the express words of this verse mean, according to Locke? He says this at the top of page 24. The Hebrew word that is here translated "that *moves* upon the earth" can also have the meaning "which *creeps* upon the earth," and he says the passage can be construed to mean that God gave Adam rule over the fish of the sea, the fowl of the air and over all reptiles—leaving out cattle, as he says on line 3 of page 24. That is a possible interpretation. But of course Locke rejects it, because the biblical author does not use the full enumeration all the time. But still, Locke had something in mind by suggesting this strange interpretation that Adam became the ruler of all lions and eagles but not of sheep and oxen, and that is a point of some great importance. One point was referred to in today's report. What is the difference between the charter given to Noah and the charter given to Adam?

Student: Well, after Noah, man was permitted to have private property as we know it, to do what you want with the creatures. Before this, man couldn't do what he wanted; he was restricted by God. You could not say, "I own something."

LS: Yes, but that is not the only point. I was more concerned now with the other side. Now let us see. We have a parallel to that a bit later. On page 31, middle: "In the next place it is manifest that in this blessing to Noah and his sons property is not only given in clear words, but in a larger extent than it was to Adam."[xxxvii]

On the next page he explains that more fully. "Adam with all his sovereignty wanted"—what did he want? He could not even take a kid or lamb out of the flock to satisfy his hunger. In other words, only Noah was permitted to eat oxen and sheep and other beasts. Adam's power over cattle, an important use of which is food, to eat them, was extremely limited. That has very great implications; for example, regarding the question of the state of nature. The state of nature is defined by Locke as a state in which man has all the privileges of the law of nature. One of these privileges is, of course, a necessary privilege:[xxxviii] the privilege of the right[24] [to] self-preservation, which includes the right to the means of self-preservation. And that means, among other things, all salutary food, naturally, of which cattle forms a not-negligible part. And now if Adam did not have the right to eat food, he obviously did not live in the state of nature. A state of nature technically, in Locke's technical terms, could have begun at the earliest with the grant to Noah after the Flood, so that the difference between state of nature and a non-state of nature has nothing to do with the difference between the state of innocence and the state of the Fall. Do you see that? That is one important consequence of that. But he also says later on[25] that Adam had the right which a shepherd may have: a shepherd can of course not take kids and slaughter them as he sees fit. He needs permission. He is not the owner of the sheep, because he can't do with them what he wants.

[xxxv] *First Treatise*, sec. 24.
[xxxvi] *First Treatise*, sec. 25.
[xxxvii] *First Treatise*, sec. 39.
[xxxviii] In the transcript: "a necessary privilege (?)"

Now this has another important implication regarding the Bible. What about lawful slaughtering of animals prior to the Fall?[xxxix] Do you remember any examples? Was there any lawful slaughtering of animals?

Student: The sacrificing in Cain and Abel.

LS: But that leads to this suggestion: eating of animals was forbidden; sacrificing was not forbidden. Yes?

Student: Well, this is a very minor point, but surely animals die or are killed in accidents . . .

LS: Well, there is no evidence . . . According to the Mosaic *code* they cannot[26] [by] *law* [be] eaten. But I believe from the statement in Genesis regarding Adam and Noah, it would appear that meat shouldn't be eaten under any conditions prior to Noah. But sacrificing was possible. Now how would this appear in the eyes of a man like Locke, this fact that men could sacrifice animals lawfully but could not eat them?

Student: The animals are in effect God's property and not man's.

LS: You can put it this way, but can it not also be understood that man in his original state was very restricted in his rights? One would have to link up, on the basis of an earlier passage in the earlier writings to which I will refer, with another great prohibition of eating which occurs at the beginning of the Bible. Do you know?

Student: The apple.

LS: Well, the apple is questionable: the fruit of the tree of knowledge. Locke refers to that story of Prometheus and Zeus in one of his early writings (page 220 to 21 of this edition[xl]). Consider this in the whole context I mentioned before, i.e., the question of providence as the basis of the traditional natural law teaching which is questioned by Locke.

There are other strange remarks about the Bible which we find here. Let me see. The main point, of course, which Locke makes is obvious. The grant was made to Adam in particular, clearly, but to two: to "them," hence to Adam and Eve. And here there is a difficulty. What does he say about that in an earlier passage? We find a description of the creation of man, and then man is addressed in the plural. What can this mean? Locke says it must mean that Eve was also meant. But the creation of Eve is told of in the second chapter in an entirely different context. And what Locke is trying to do, following some theologians which he quotes, is to harmonize chapter 1, where no creation of Eve out of Adam is mentioned, with the second chapter, where the creation of Eve out of Adam's rib is mentioned.

Now let me see. There are a few passages on page 30. He makes this remark in the first paragraph: "It is probable, I confess, that Noah should have the same title, the same property and dominion after the Flood that Adam had before it."[xli]

[xxxix] From what follows it appears that "Flood" should be read here in place of "Fall."
[xl] Namely, this edition of the *Essays on the Law of Nature*.
[xli] *First Treatise*, sec. 36.

Why is this so? Why is it probable? That creates a certain difficulty. The statement is, of course, ambiguous. If you say "Adam before the Flood," that could very well, since Adam lived at the time of the patriarchs,[xlii] mean the latter part of his life after the Fall. But of course, if we take Adam as a whole, it is by no means probable that the status of Noah should be the same as that of Adam, i.e., prior to the Fall. In other words, the question of the Fall comes up, to which we find other references later. I mentioned already that the full rights of self-preservation, which includes the right to food, are given only after the Flood, i.e., after the Fall. But let us see the more important remarks in the next chapter on this subject.

First, there is this sentence from Genesis 3:26: "And thy desire shall be to thy husband, and he shall rule over thee." From this Filmer infers that Eve is to be subject, politically subject, to Adam. What is Locke's argument about that? Locke simply says this is a prophecy of what will happen; it is not giving a right to anybody. And then he argues further that the context speaks against any grant of right because this occurs after the Fall, where God would be at least willing to grant Adam prerogatives and privileges. That is on page 44. But the main point which Locke makes is this. The passage doesn't apply to Adam but to all men, and therefore it means the subjugation of the wives to the husbands, and not of all men, of all contemporaries, to Adam. At the end of paragraph 45, let us read that passage.

Reader:
It will perhaps be answered again in favour of our author that these words are not spoken personally to Adam, but in him, as their representative, to all mankind—this being a curse upon mankind because of the Fall.

God, I believe, speaks differently from men, because he speaks with more truth, more certainty; but when he vouchsafes to speak to men, I do not think He speaks differently from them in crossing the rules of language in use amongst them; this would not be to condescend to their capacities, when He humbles Himself to speak to them, but to lose His design in speaking what, thus spoken, they could not understand. And yet thus must we think of God, if the interpretations of Scripture necessary to maintain our author's doctrine must be received for good; for, by the ordinary rules of language, it will be very hard to understand what God says; if what He speaks here, in the singular number, to Adam, must be understood to be spoken to all mankind, and what He says in the plural number (Gen. i. 26 and 28)—[xliii]

LS: Now what does it mean regarding the issue more important than[27] Locke['s] criticism of Filmer? The passage here is stated to Adam. Is this what he means, that this verse is meant only stated to Adam? That's Locke's interpretation.

Student: The consequences of the Fall don't descend to all men.

LS: That's it. It amounts to a denial of the Fall. That is what I mean. Now that is confirmed by the sequel to some extent, because there he speaks of the curse on Eve, namely, that "I will greatly multiply thy sorrow and thy conception; in sorrow thou shalt bring forth children,"[xliv] that this does not exclude the right of Eve, of women, to circumvent the Fall by using means which make childbirth easy. The curse is only limited to Eve, in other words, and not on women, on Eve's daughters. Now let us take one more step: he discusses here not

[xlii] Strauss is referring here to the antediluvian patriarchs.
[xliii] *First Treatise*, secs. 45-46.
[xliv] *First Treatise*, sec. 47.

only one part of the curse, the curse on Eve. What about the curse on Adam? What is the burden of that curse? It is quoted on page 36: "In the sweat of thy face shalt thou eat thy bread."[xlv] Well? Is there anything in Locke's own doctrine which reminds us of that verse?

Student: Acquisitiveness.

LS: No, not necessarily. Some acquire without sweating.

Student: The labor theory of value.

LS: Labor. *The* title to property is labor. Therefore, "in the sweat of thy face shalt thou eat thy bread." But what does Locke say later on when he pursued the argument of property? For example, if you take a squire in England and a well-to-do man who eats three square meals a day, then you say of him he eats his bread in the sweat of his face. I mean, he may have been hunting . . . Is he not the lawful owner of his property, according to Locke? Is he or is he not?

Student: Yes.

LS: He is, but he has not acquired it by labor. How does Locke state this in general theoretical terms?

Student: Well, there is the right of inheritance—a man wants to look after his family. And there is a natural right to provide and sons to inherit, and when society is formed property becomes fixed . . .

LS: In other words, labor ceases to be not only the *only* title, but *any* title to property once civil society is established. After the establishment of civil society, all titles to property are positive titles. You can labor. For example, you can go and dig as a digger, say. You work very hard. Does that give you a title to that land, that part in which you do the digging? Of course not. Let us now state it in typical terms. Just as a woman can circumvent the pangs of childbirth by proper medical methods, man can circumvent the curse of labor by the proper kind of organization. It is exactly the same thing. It is strange that the doctrine of property is in the fifth chapter of the *Second Treatise* and this parallel case of the other part of the curse is in the fifth chapter of the *First Treatise*. I think that is the most important point which occurs here. Needless to say, the refutation of Filmer must always be read and considered, and even on its own terms there may be quite a few interesting points which I, for example, have overlooked. But one must not overlook the fact that Locke is killing two birds with one stone in his attack on Filmer. He does something more. The real relation of Locke's political doctrine to the biblical doctrine appears, I believe, more clearly from the *First Treatise* than from anything else, especially if in reading the *First Treatise* one has already an inkling, or more than an inkling, of the teachings of the *Second Treatise*. The labor theory of value is of course very important theoretically in Locke, but practically it is superseded. The theory that labor is the only legitimate title to property is completely superseded in civil society. The labor theory of value proper is of course never superseded: all value originates in labor. But value is one thing and property is another thing. You may produce labor without acquiring any property, for example. Or is this not intelligible? The socialist[xlvi] consequence from Locke is drawn, against what Locke understood by it. It may be theoretically superior to

[xlv] *First Treatise*, sec. 45.

[xlvi] In the transcript a marginal notation questions whether "socialist" is correct.

Locke; that I do not go into now. But in itself, the meaning of chapter 5 is exactly this: Only if labor ceases to be the title to property can you get a civilized society. There must be people whose property is not acquired by their labor. Well, we come to that chapter and we will discuss it in more detail. Here I note only this connection with the biblical verse. The case, it seems to me, is exactly parallel to the case of the curse on Eve, a curse which is limited by Locke to Adam and Eve as these two persons. The later generations are freed from it.[xlvii] At the end of the verses, speaking of Adam and Eve leaving Paradise, "The world was all before them."[xlviii] In other words, it was not an expulsion from Paradise, as it was traditionally understood. "The world was all before them." That is a similar understanding[28] [to the one] Locke has.

This question of the state of nature and the Bible will come up more and more frequently. But I can give this warning now. The distinction between the state of innocence and the state of Fall, or the state of pure nature and corrupted nature, has nothing to do with the difference between the state of nature and the state of civil society. That was an overstatement. You cannot understand the distinction between the state of nature and the state of civil society if you do not see it as a deliberate correction of the traditional Christian notion of the distinction between the state of innocence and the state of the Fall. But there will be another opportunity to explain that.

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[1] Deleted "this."
[2] Deleted "(top)."
[3] Deleted "[by another student]."
[4] Deleted "Now."
[5] Deleted "and."
[6] Deleted "in."
[7] Deleted "himself."
[8] Deleted "and."
[9] Deleted "Figgis."
[10] Deleted "than."
[11] Deleted "Two."
[12] Deleted "(ies)."
[13] Deleted "of Filmer."
[14] Deleted "There is one minor."
[15] Deleted "here we have."
[16] Deleted "(beginning on page 10)."
[17] Deleted "that is to say, even unlimitable."
[18] Deleted "(page 119)."
[19] Deleted "it."
[20] Deleted "Filmer did not."
[21] Deleted "(page 17)."
[22] Deleted "(Gen. i. 28)."
[23] Deleted "(page 21)."
[24] Deleted "of."
[25] Deleted "where he says."
[26] Moved "be."
[27] Deleted "the."
[28] Deleted "as."

[xlvii] In the transcript a marginal notation questions whether "freed from it" is correct.
[xlviii] Strauss is quoting John Milton, *Paradise Lost*, 12.646.

On Locke's First Treatise, chapters 6-9
Session 7: January 27, 1958

Leo Strauss: . . . what occurred there, on the face of it, seems to be a completely obsolete subject. Therefore we must always think of the very practical, very urgent issue which is at stake in this book, even in the *First Treatise* of Locke. In discussing the essays, the early essays of Locke on the law of nature, we have become aware of two radically different understandings of natural law, the traditional one and the one which we find partly in Locke, more simply in Hobbes. And to begin with, it seems to be an entirely uninteresting, purely historical question whether Locke is a bit more Hobbean, or maybe even thoroughly Hobbean, or whether he is more in agreement with the tradition. In a sense, it *is* a purely historical and antiquarian question. But what is this issue of the two forms in which natural law was understood? The modern natural law teaching, I would say, is one form, and perhaps the classic form of what one may call the modern project altogether. This notion[1] emerged early in the sixteenth century, the so-called Renaissance, and[2] then gained power from generation to generation and has remained identically the same, in spite of all the important, more superficial changes.[3] It was this notion which was indicated by such terms [as] "science for the sake of power," "to relieve man's estate," "the conquest of nature," "the raising of the standard of living," "the establishment of a universal society," a universal state, a universal league of nations, a universal society which is no longer linked to a state. All these various forms have something fundamentally in common: the attempt of man to establish a heaven on earth by his own power, and to do it in such a way that the perpetuity and solidity of this society would be guaranteed forever. All the particular notions which were mentioned in the classic age, in Descartes and other writers . . . even some prospect that they could get rid of death itself. Man would be complete master of his fate. This was the common formula of this great effort.

And it would of course be very silly to think that this is dead. Our social science says, of course, that it can only give means for this end among other ends. But it is in no way linked to that: it can also be linked to any other end. But I think a closer study would show that this older notion, which is very visible in communism, of course, but which also played a great and decisive role in the modern democratic development, is not completely absent from present-day social science. As far as I remember, a close study of Lasswell, for example, would show that a similar notion of the establishment of a paradise on earth[i]—in Lasswell's case, psychoanalysts happen to be much more important than the other things—and the newer gimmicks do not constitute an essential difference: the main vision is the same. And one can say that all earlier thought of all civilizations, or cultures, or nations differs radically from this modern project, because all these other thoughts implied tacitly the denial of the possibility of such a control of man's fate by man. That can be expressed in very different ways, but I think that was common to man in all former ages.

Now the modern natural law doctrine, which as such was developed by Hobbes relatively late, around 1640 perhaps, is however one classic form of this thought: the notion that human life begins with a state of nature, which is a state of absolute poverty, war, and misery in every respect. The only guide that man has is each man's natural right to self-preservation.

[i] Harold Lasswell (1902-1978), a prominent political scientist who studied power relations and political psychology. He was professor of political science at the University of Chicago from 1922-38.

Guided by that, man can gradually learn to devise means for his self-preservation—and not only for his mere self-preservation but also for his comfortable self-preservation—and develop along these lines a system of a peaceable order in which the government has but two functions: (a) to establish peace, and (b) to make life as comfortable as possible for all society. Of course, in the Hobbean state that was still very much limited. In the first place, you had to have a very strong government, which means a certain amount of unpleasantness which cannot be taken away, and secondly, the possibility of war was admitted as something inevitable. To that extent, of course, that is a somewhat old-fashioned version. But the fundamental point—the starting from the original situation of man as one of complete exposedness, forsakenness; man owes all good things which he has entirely to his own efforts; at the beginning there are only rights; duties come in only as needed for the safeguarding of these rights—these things are developed very clearly in Hobbes.

Now in the case of Locke these are very complicated, because Locke was a very cautious man, as we have seen. Therefore he presents a combination of a Hobbean natural right doctrine with a traditional version. And all the difficulties of interpretation are due to this strange hybrid mixture which he constructs.[ii] But this seemingly muddleheaded thing which Locke draws up—muddleheaded compared to the clear lines of Hobbes's doctrine—is the main reason for the very great success of Locke. Whatever Locke himself may have thought, this prudent, judicious mixture which he presented appealed to many people who were merely repelled by Hobbes. Hobbes's main conclusion[4], or at least most visible practical conclusion was: very strong government, and that meant absolute monarchy. That was detested very much in his homeland, especially after their dealings with James II. Locke showed that what one really needs for the sake of self-preservation is indeed a strong government, but this strong government does not have to be an absolute monarchy. Something like the British constitutional monarchy—you could almost call it a republic—is much better for this purpose. So Locke had an immediate appeal to the more generous part of the population, and[5] "generous" is a synonym of "liberal," as not everyone will easily remember today, with the liberal tradition. Those who loved freedom, and so on: *generous* people. Today this is a bit changed, as some of you may know.

So at any rate, Locke had a success which I believe is unique . . . Rousseau had an enormous effect. But what is the practical influence of Rousseau? That is very limited: you can trace it among the Jacobins in the French Revolution, among certain anarchists, and so on. But that a great political system, lasting for centuries, should somehow feel that it is authentically interpreted by a philosopher, i.e., Locke, and the enormous influence which he had in the formative period in *this* country, these are well known facts. In order to understand that, however, it is necessary that we make a distinction between the broad practical proposals and the apparent principles of Locke, which everyone can easily find, and Locke's own thought . . . The principles of Locke, I believe, and I think it will become clearer as we go on, are not identical with those he set forth all the time. By virtue of the fact that Locke is really much more "modern" than he appears at first sight, his influence has lasted long beyond the time when the traditional natural law teaching was still very powerful. Let me restate that sentence. When Locke wrote, that is, in the seventeenth century, the traditional notion of natural law was still very powerful, and it appealed to something which most contemporaries would have granted. A hundred years later, this natural law teaching had no longer this powerful influence in the Protestant countries. But since in Locke there was always this other element, that modern element that was really the principle on which he argued, his influence

[ii] In the transcript: "constructs (?)"

retained its strength in spite of the weakening of the traditional natural law notion to which he had also appealed. I hope this remedies the defect of the first sentence. Therefore, for all these criticisms it is really necessary to read Locke with precision and not merely those principles to which he appeals . . .

Let me try to make it a bit clearer. Here you have the broad practical teaching, the famous principles, e.g., "No taxation without representation," and so on. This is apparently based on these fairly traditional principles. The true reasoning is, however, let us say over here. [LS writes on the blackboard] On the one hand, this reasoning is absolutely spurious, but it is stated in a rhetorically impressive way, from the traditional principles to the practical teaching. The strict teaching starts from over here: that is the true basis of what he thought. The problem of understanding Locke consists precisely in tracing his practical proposals, which everyone can easily see, to the principles which truly justify them as distinguished from the principles which are appealed to in a rhetorical and popular manner. Is this clear, or is there any difficulty which could be remedied without further reading?

Student: Are [there] any sets of principles which have been isolated from Locke—that is, can we take these principles out of Locke and say: Here are the principles of John Locke?

LS: I don't understand . . . Locke had some principles from which he deduced his doctrine. You don't question that.

Student: No, I don't. I wonder about the problem of isolating them. Is there a period in his work in which you can take them out and say these are the principles . . .

LS: But he appeals to certain principles, doesn't he? He does this explicitly. Now one has simply to look up whether these principles are truly the basis of the practical conclusions which he draws from that. And if this does not work out, well, maybe Locke was just a bad reasoner. But it is also a possibility that he was a good reasoner, and that there are other principles present in his work from which the doctrine follows in a perfectly necessary manner. That is simply a question of empirical procedure. We have to look.

Student: Did he appeal to these principles[6] [in] a theoretical sense or merely[7] [in] an unconscious or commonsense sense?

LS: Well, if they were unconscious, then we wouldn't know anything about them. But in speaking about "commonsensical," it is hard to see what you mean. For example, I would call it a commonsense appeal if it was directed to the British Constitution. That would be [a] commonsense appeal. Then it is assumed that everyone knows more or less what the principles of the British Constitution are, although that is of course not so simple. But Locke doesn't appeal to the British Constitution: he appeals to natural law. Those are his principles, and one has to see what he teaches about natural law. Now I have indicated on a former occasion[iii]—and, for that matter, the whole discussion on the *Essays on the Law of Nature* led to this point—that Locke had in front of him this traditional natural law teaching and that he undermined it at every point. He contradicts himself flagrantly all the time regarding that traditional natural law teaching. The question arises: Does he not have other principles of natural law, different from those of the Thomistic tradition? And I think we can discern such principles. One principle was indicated in today's report, namely, the absolute importance of

[iii] A reference to Strauss's summary statement at the end of session 5.

self-preservation. I think it is possible to do that. I quoted a passage from the *Essay Concerning Human Understanding* in an earlier meeting,[iv] where he speaks of the possibility of *demonstrating* morality or the natural law and in which he does this in two entirely different ways. The one is theological and the other starts from such principles as "There is no injustice where there is no property," or "Where there is government there cannot be absolute liberty." No theological foundation is in any way taken into consideration, and the emphasis is entirely on the two phenomena of property and government. And this latter part can be elaborated very well from Locke's teaching, and put together. It requires some careful study. Now if there is nothing else, let us turn to today's report.[v]

I do not know whether you connected these two points, but you said Locke somewhat misstates the case by saying that Filmer's argument is based entirely on scripture. Locke made Filmer much more biblicist, if I may say so, than Filmer is?

Student: Yes.

LS: You also quoted this crucial passage in which Locke says reason is man's only star and compass. This is very definite, and this can be confirmed by other passages. In other words, Locke would admittedly have been a radical rationalist. Did you connect these two, or try to connect them?

Student: I meant there to be some sort of connection, although I didn't make it very apparent, when I said in the end that when Locke propounded a new basis of government, it did not appear very revolutionary, because he appealed to the authority of God in both cases. Filmer appealed to the authority of God through scripture and Locke through reason.

LS: Well, but the distinction . . . I'm sorry I have to bother you with these things because they are so remote from social science. In the tradition, people made a distinction between two kinds of doctrine of theology. One was called natural and the other was called revealed theology. Now a man could believe in God and speak of God without accepting revelation. So when Locke is a radical rationalist, that has nothing to do with the fact that he speaks of God. It could be a purely natural theology . . . No, that has nothing to do with it.

Student: I thought it did, because Locke seemed to be maintaining in this way that he was appealing to theology, to natural theology as opposed to . . .

LS: But still, the Bible as Bible gives you revealed theology . . . When Locke says Filmer is a biblicist, he means Filmer's teaching is absolutely based on the Bible and does not refer to rational [theology].[vi] Locke is indeed a radical rationalist, and therefore he may also[8] [refer to] a rational theology,[vii] but only to a rational one. Is that clear?

Student: It seems to be a clear distinction now. The fact is that Locke of course refers to a revealed theology, but not as authoritative.

[iv] Session 5.

[v] The student read a paper. The reading was not recorded.

[vi] In the original transcript: "indistinct."

[vii] In the transcript: "prefer a rational theology," but with the notation that the last two sentences here are "indistinct."

LS: But to the extent to which Locke is a radical rationalist, there is no way of his accepting revelation. Or is there? Aha! That is the root of it.[viii]

Student: I believe in the section he explicitly raises the question . . .

LS: Well, in the eighteenth century there existed something which was called enlightened Christianity, and someone, who was a good theologian, said about it: "This enlightened Christianity never knows where it is enlightened and where it is Christian."[ix] You know there are all kinds of compromises. In one sense you are quite right. There were people who said revelation teaches nothing except what reason also teaches: the teaching of the Bible is identical with the teaching of reason. Locke himself seems to have said this in his *Reasonableness of Christianity.* But there is one point, one simple reasoning which makes doubtful the idea of such a simple equation. Because if revelation teaches nothing except what reason teaches, why is revelation necessary?

Student: Perhaps revelation can be necessary for other than political purposes.

LS: No, no. I'm thinking only of truth now, and not of political things. But if revelation teaches nothing but what reason tells you, what is the use of revelation?

Student: Unless men are not sufficiently reasonable.

LS: All right, then it means it is to have a provisional function for children. That is true. But it would be replaced in the age of enlightenment. Revelation as revelation would no longer be necessary, and therefore a thinking man never has to rely on it. The thinking man either rejected revelation or made a distinction between revealed theology and natural theology . . . Of course, Locke could have made this by[9] accident, i.e., because he was muddleheaded, but I believe that is not true. We will come to that later.

Student: On the other hand, he might have not wanted to make it appear that he was absolutely rejecting revelation.

LS: Sure, that is without question. That belongs to the surface. That is supposed to be an act of prudence; it does not belong to the theory itself. So that is one point. Now the other: you said something about self-preservation, a point I found extremely interesting, if you are right. Self-preservation is the overriding thing only in man, and not in the other animals. Which are the passages? I had never thought of that, but you may be right. Do you mean paragraph 86?

Student: In paragraph 88 he says that it is "the strongest desire planted in men."

LS: I see. He speaks here indeed only of men. That is very interesting if it is true.

Student: And in paragraph 56[10] he refers to God, on page 44, saying,

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[viii] The transcriber notes: "Mr. S looks at a reference."

[ix] We have been unable to identify the theologian. For a brief survey of Christianity and the enlightenment, see "Eighteenth Century: an Overview," in *The Oxford Companion to Christian Thought*, ed. Adrian Hastings, Alistair Mason, Hugh Pyper (Oxford: Oxford University Press, 2000), 195-99.

"He has in all the parts of the Creation taken a peculiar care to propagate and continue the several species of creatures, and makes the individuals act so strongly to this end that they sometimes neglect their own private good for it, and seem to forget that general rule which nature teaches all things—of self-preservation—and the preservation of their young, as the strongest principle in them [that is, stronger than self-preservation—student] overrules—"[x]

LS: But the question is whether here he does not include man. That is the question.

Student: That is a possibility; however, since he is specifically vague in wanting to put it that way, and this follows immediately on the example of wild beasts . . .

LS: . . . to decide such a very great question in a moment, but it is a very interesting suggestion, a very interesting suggestion. And one can make sense of it. Well, the general thesis which you find in everything is: self-preservation is characteristic of all living beings, and it is the fundamental desire, the fundamental inclination of all human beings. That you find everywhere. Now Locke of course says it also; but if you are correct, Locke says that in the other animals the desire for self-preservation is somehow subordinate to the desire for the propagation of the species. And only in man does this desire for self-preservation assert itself without any [qualification]. Do you see the possibilities which that assertion contains?

Student: Well, man has one thing which distinguishes him from animals, and that is the reason, the reason which almost makes him equal to the angels.

LS: Maybe, but certainly it would mean that only men can be radically "individuals." The others are all part of a species, or what have you. Men can isolate themselves; they can consider their own self-preservation. It is the most important thing. And this may be connected, as you rightly suggest, with the fact that he has reason. This is something which is really worthwhile, and it would throw new light on this whole problem. In other words, whether self-preservation does not come out in Locke as something peculiarly human, because in the case of the other species it would be weaker or subordinate to the preservation of the species. This should be looked into carefully.

Student: The principle then remains self-preservation in both cases; but in the first case, self-preservation in the case of beasts refers to the species, whereas in the case of the human being it does not refer to the species. Self-preservation remains the fundamental principle.

LS: Well, but your formulation also conceals the problem, does it not?

Student: The implication for man is the radical destruction of the species.

LS: Or at least it is subordinated. Concern with the species is absolutely subordinated to the concern of the individual for himself. But I am not sure whether you are right. But it is certainly an interesting question which you raise.

Student: Locke seems to say as much later on, e.g., page 67[11].

[x] *First Treatise,* sec. 56.

LS: But he speaks here only of men. Sure. But that of course does not necessarily mean that this is true *only* of men. That is my objection. One would have to put together all the relevant passages.

Student: If that weren't the case here, then you would have to find some way to reconcile the contradiction. In section 88 he says that preservation of the individual has precedence over preservation of the species, and then in the other case, he says . . .

LS: Well, I am aware of these contradictions, and I always had another solution; but your solution strikes me as preferable, if it can be proved, namely, that this first statement was only a provisional statement and was revised. In other words, the statement in which the preservation of the species was said to be the most important principle is later on revised. In other words, that Locke takes his time until he discloses the absolutely fundamental character of self-preservation. That was the way in which I had understood it before, too, but your solution seems to be more interesting, if true.

Student: At the bottom of page 45, he says that the main intention of nature "willeth the increase of mankind and the continuation of the species in the highest perfection." Then, if what you have been saying is true, wouldn't this imply something even more radical than the individuation of man, that is, his distinction from nature, and in some sense his distinction from his own nature, if it is a law of nature and his own nature that the species be preserved?

LS: This passage is difficult for other reasons, but I do not believe that it creates here a difficulty, because here he is speaking of the main intention of nature regarding the propagation of the species. In other words, he distinguishes here normal—how do they call it now?—sexual practices from abnormal ones, a limited question. I believe that does not decide the broader issue.

Student: On the other hand, we may misinterpret Locke here because, after all, why do men go out and fight wars? Now this does not appeal to anything of self-preservation, i.e., to go out on the battlefield and kill himself, but on the other hand it serves to assure that the young are preserved from being mistreated in that way.

LS: That would be no difficulty, because Hobbes meant the same thing. Self-preservation is the fundamental desire. It is perfectly compatible with endangering one's life. That is an easy thing. We come to that question in the *Second Treatise*, where Locke will discuss it. That has nothing to do with that. I mean, in this simple way Locke cannot be refuted by empirical evidence. You know, there are always people who commit suicide. That in itself would not be relevant. The question we come across here as the result of this paper is whether Locke did not limit self-preservation in its radicalest only to man. And that is a very interesting suggestion.

Student: I would say that makes him the exact opposite of Aquinas and Aristotle. Man is a social animal. Locke appears to be saying man is less social than any other animal.

LS: In a way, yes. But in Aristotle there is also an admission that there is something in man which transcends the *polis*. That would not be adequate in itself. It is certainly worthwhile to go into that, and perhaps whoever is reading the paper next time will find it useful to watch this problem a bit.

Student: I believe Locke sometimes speaks of the public good and he seems to equate individual rights [. . .] and therefore this would almost mean, from what we are saying today, that self-preservation is equivalent to the public good or the common good.

LS: In a way, yes, but I can state it to you very simply. That is really the Hobbean thing: Self-preservation is not possible, generally speaking, if there is no peace domestically, if there is war of everybody against everybody. Therefore, the moral conditions of peace: to be nice to man, to be gentle. Peace is the content of the natural law. Now peace is of course *essentially* a *public* good. You cannot have peace if your neighbors don't have peace. There are always two people needed, at least, in order to have peace. So peace is essentially a public good. And if there is an essential connection between self-preservation, the most fundamental need, and peace, an essentially public good, [then self-preservation is equivalent to the public good].[xi]

There were a few more points. Why do you think Locke was unfair to Filmer regarding usurpation?

Student: Locke said that Filmer had this radical, strange, and surprising doctrine that he has the legal right to authority who can capture it.[xii] He based it on one single passage of Filmer.

LS: Well, I do not know whether Locke bases it all on a single passage, whether there are not other passages. But even if there were only a single passage, would this not be a fatal admission, an admission which he is compelled to make because he must account for existing governments and must protect himself against criticisms that he is subverting all governments in the world? How do you know that the present Queen Elizabeth is the direct heir to Adam? How can you prove that? Otherwise you must suspend your loyalty in England until you have found out, and you will never find out. So I think there Locke has got a strong point.

Student: Yes, but this is not quite the issue of usurpation that he criticizes here, because Locke's criticism of what Filmer says[12], paraphrasing Filmer's doctrine, "which in plain English is to say that regal and supreme power is properly and truly his who can by any means seize upon it; and if this be to be properly a king, I wonder how he came to think of, or where he will find, an usurper."[xiii] Because Filmer had maintained the usurper takes over the claim of inheritance from Adam. When he refers [. . .] The usurper has a different claim than Locke criticizes in this case, because what Filmer has claimed here is that a person has the authority of government simply by having supreme authority, not by having claimed the descent, rightly or wrongly, from Adam.

LS: But if the only title to government is descent from Adam in the oldest line, then no other title can be valid, of course. Even usurpation can't stand against that.

Student: The usurper is exactly the person whom Filmer is talking about here. But the fact is . . . [xiv]

LS: . . . fact that every government must have Adamitic—that is, full—power. That is one thing. But in addition, it must be derivative in a straight line of descent from Adam. That is

[xi] In the transcript: "several words indistinct."
[xii] In the transcript: "(catch ?) it"
[xiii] *First Treatise*, sec. 79.
[xiv] The tape was changed at this point.

incompatible. I think Locke knew of this and talks common sense. A few years ago a student read a paper in my Locke seminar in which he went much beyond you and presented Filmer as a man of supreme political wisdom. You abstained wisely from that. That is a kind of romanticism, because Filmer has had such a poor reputation for centuries. And he had some points which are not bad, but his whole doctrine, that is something else again.[xv] The only problem is: Why did Locke do that? Why did he take the trouble to follow this argument point by point, an argument which was not worth his effort? And I explained this last time, as you partly confirmed this time, that in criticizing Filmer, Locke is really criticizing the biblical authority as such. That he somehow manages to identify . . .

Student: But it takes a little bit of juggling to do it.

LS: Yes, but I think we will come to that point. We begin now with chapter 6[13], "Of Adam's Title to Sovereignty by Fatherhood." Filmer had said the father has the natural right of dominion over his children. No child is born free. But Adam was not begotten. Hence, only Adam was ever free. All other men are subject to Adam or to his rightful heirs. To which, Locke replies: The natural right of a father is [pre]supposed by Filmer. He does not give any clear evident reason for it. Let us read the conclusion of the first paragraph, the last sentence.

Reader:
And indeed the act of begetting being that which makes a man a father, his right of a father over his children can naturally arise from nothing else.[xvi]

LS: That should be crucial for the further argument. The right of the father is derivative only from the act of begetting. That is Filmer's thesis, based on a quotation from Grotius. And Locke does not examine this here, as you see,[14] [or] in the sequel. Instead, he raises the question of how far the right of the father extends. According to Filmer, it is absolute power of life and death. Filmer does not give any reasons, but others do. In the next paragraph[xvii] Locke examines the reasons why fathers acquire power of life and death over their children by the act of begetting them. Now what is the reason? The reason is that the life that the child has was given to him by his father. That life is his father's: it is a gift, he gives it to him. The father can take it away. That was of course not Filmer's reasoning, but as Locke makes clear, it is implied by Filmer. Now how does Locke argue against that? Well, commonsensically. Think of other gifts. If you give something to someone, you are not entitled to take it back. This is the first point. But the other point, which is more important: the father does not give life to the child, for the father . . . Why does the father not give life to the child? That is a very remarkable argument. Why does the father, by begetting the child, not give life to the child?

Student: He doesn't know what it is.

LS: He doesn't know what life is. The father as father is not an anatomist and physiologist. He doesn't know anything of what he is really doing. He cannot make a living child. Only if man could make a child and not merely beget it would he have a right to unmake it. What is he driving at? What does that mean? Let me state it generally. Must he who gives a thing have made it? I suppose you all have made gifts of things which you could never make, e.g.,

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[xv] In the transcript: "(that is something else again) (?)"
[xvi] *First Treatise*, sec. 50.
[xvii] *First Treatise*, sec. 52.

a watch. Most of us can't make a watch, and yet we give it. What is he driving at? Does this question remind you of something, of a broader problem? Now giving life means making, creating. Let us apply the question to the question of God. God made man. God is our maker, as Locke quotes here in paragraph 53. Hence it would follow: Since God has made man, he can unmake man as he pleases. That is the issue which is here implied. Now what do you see here? Let us read at the bottom of page 41.

Reader:
He that could do this—

LS: Namely, make a living creature.

Reader:
might indeed have some pretence to destroy his own workmanship.[xviii]

LS: Now it is God who makes living creatures. Does God have some pretence to destroy his own workmanship? Do you see a problem here? Well, there is the question which we came across already in the *Essays on the Law of Nature*. What about God's omnipotence? God has created the world freely; he has made the world and man freely. Can he equally well unmake them arbitrarily? I think the word "pretence" is significant. By this Locke here means [that] a *prima facie* case, especially on the basis of certain biblical passages, can be made for this view, i.e., that he who made a thing can unmake it with the same right as he made it. But is this really so? Is this right a true right and not an erroneous supposition?

Student: Well, this goes back to the problem whether God's omnipotence is limited or not by God's goodness or God's wisdom.

LS: Yes, it is part of that question. And I think the word "pretence" is a very strong word to use here. And Locke, I believe, does not recognize that, as we can have seen from the early *Essays*. If I understand this correctly, it means this: God, even God, has no right to destroy his work, as distinguished from the biblical teaching that God has made a covenant with Noah not to destroy his work. He made a covenant, which means his not being free to do it is due entirely to his covenant. What Locke implies is that it is not due to a mere free act, i.e., the covenant, but to his nature. It is impossible for him to do it. In other words, I believe we must consider that the problem, the theological problem, is here always present in this section.

In the next paragraph (54) Locke examines the right acquired by begetting. In order to make their children, men must not only possess the required skill and power but must also design the begetting while begetting the children, and this happens only rarely. He speaks here of the voluptuary and other people, the separation of the desire and the function. The function is to propagate the human species, but the desire as such is not necessarily directed toward the function. This distinction between the desire and the function is the basis for the possibility of hedonism, hedonism which tries to find the bearing entirely in terms of pleasure and pain without a consideration of the function in the service of which pain and pleasure arise. Now Locke did make use of this possibility. His teaching is a fundamentally hedonistic teaching, as you will see from his *Essay Concerning Human Understanding*. The father has no thought of giving life, to say nothing that he could not give life because he wouldn't know how to

[xviii] *First Treatise*, sec. 53.

give it. The father has no thought except[15] his own pleasure. And by this act, which is prompted entirely by his desire for pleasure, he should acquire the right to kill. That is Locke's argument against the view presented by Filmer, or Filmer's authorities, that the mere act of begetting gives the father a right of life and death. On the contrary, the Lockean argument leads to the question, which he does not raise here explicitly but will discuss in the *Second Treatise*, whether begetting as begetting can give any right. Is it not rather the care, the upbringing? We will come to that later on.

In the next paragraph,[xix] already[16] the emphasis shifts from begetting to nourishing and upbringing. In this context, Locke stresses the greater right of the mother. If we were to take our guidance entirely by nature and by natural law, the real right over the child would belong to the mother and to the father only secondarily, by virtue of a grant on the part of the mother. That is Locke's point. So a natural right of the father does not strictly speaking exist. Locke does not elaborate this here. Do you know of anyone who said this before Locke?

Student: Hobbes.

LS: Yes, and that is a very important point of agreement. The mother and not the father . . . In the center of paragraph 55, Locke denies that the superiority of the male has any scriptural basis.

Now in the next paragraph (56) he discusses the right to expose and to sell children. This right is based on the practice of mankind as distinguished from the dictates of nature. Reason as well as revelation forbids this abominable practice. The strongest principle is that of perpetuation of the race. On the other hand, you see in the same context[17]: "Doth God forbid us under the severest penalty—that of death—to take away the life of any man, a stranger, and upon provocation?"[xx] What is the implication of the fact that the penalty of death is the severest penalty? What light does this throw on our natural inclinations and their order? Why is the penalty of death the severest penalty?

Student: Because the strongest tendency is toward self-preservation.

LS: In other words, the good taken away, the good which men are deprived of by that punishment—every punishment means, as you have learned from Mr. Lasswell, a deprivation—[by] that severest penalty, is by implication supposed to be the most important good, that is to say, life. But if life is the greatest good, then the desire for self-preservation must be the most powerful and most important inclination. That does not . . . because he is speaking here also of[18] man and not of other animals.

Now let us see. This passage which follows in the sequel[19], "reason, which is his only star and compass," is a perfectly clear[20] admission, [I think], of the fact that Locke did not admit revelation.[xxi] At least he did not admit a revealed teaching which had an excess beyond reason. That can be proved by this statement; whether he admitted *any* revealed teaching has to be investigated.

[xix] *First Treatise*, sec. 55.
[xx] *First Treatise*, sec. 56.
[xxi] *First Treatise*, sec. 58.

Student: I was interested by the fact that the whole sentence, starting "Nor can it be otherwise," is a very poetic sort of sentence. That is rather rare in Locke.

LS: Very rare. Which do you mean?

Student: The second sentence in paragraph 58: "Nor can it be otherwise in a creature whose thoughts are more than the sands and wider than the ocean, where fancy and passion must needs run him into strange courses . . . "

LS: Yes, that is true. He rarely uses that language except in quotations. I cannot immediately exclude that these are not quoted expressions. One must be careful. Still, that he embodies them is characteristic. One must be very careful in these passages. You do not necessarily know that these are Locke's own words. People did not always add this obligatory quotation mark, especially if they were very well-known phrases. But still it does not do away with the fact that it is striking in Locke's very pedestrian style.

In paragraph [56][21] the model of the relation of parents to children is the irrational animals. They behave sensibly: they don't sell and expose their children, or kill them. Very well. But what is the purpose of that? If the model of natural law regarding parent–children relations is supplied by irrational animals, what follows from that?

Student: Reason can't discover natural law, apparently.

LS: Why not?

Student: Well, if the basis for the natural law teaching on a certain point is carried out by irrational animals, whereas creatures of reason seem to contradict it . . .

LS: I see. You link it up with what was pointed out in today's report. Yes. In this way it makes sense. In other words, this being a member of a species is somehow weakened and perhaps destroyed by the presence of reason. Yes, in the complete context that makes sense, but I was thinking of a more obvious problem. What is the relation of the animal father and the animal mother? Are they married?

Student: Noncontractually.

LS: Are they married? They are not married even if they happen to live in couples. Now that leads to certain consequences. Let us look at paragraph 59, this passage to which one of you referred.

Reader:
Be it, then, as Sir Robert says, that *anciently* it was usual for men "to sell and castrate their children" (*O*. p. 155). Let it be, that they exposed them; add to it, if you please—for this is still greater power—that they begat them for their tables to fat and eat them. If this proves a right to do so, we may, by the same argument, justify adultery, incest, and sodomy, for there are examples of these too, both ancient and modern; sins which I suppose have their principal aggravation from this, that they cross the main intention of nature, which willeth the increase

of mankind and the continuation of the species in the highest perfection, and the distinction of families, with the security of the marriage-bed, as necessary thereunto.[xxii]

LS: Now what[22] then [is] the status of these things? Adultery and incest are of course actions committed by animals without being adultery and incest. What is the basis for these concepts, e.g., adultery, incest, and sodomy, according to Locke? What is the ground of them? The ground is the fact that in the case of man you can speak of adultery and incest, whereas you cannot speak of them in the case of brutes? I mean, on the basis of what does Locke speak of adultery? What is the ground of it? Adultery is a sexual relation, I take it, between human beings of different sexes. So is a legal marriage relation. What is underlying the distinction between adultery and nonadultery? There must be a basis for it.

Student: The legal status of contractual marriage.

LS: In other words, it would be clearly positive. What does Locke say?

Student: For the continuation of the species, mankind requires . . .

LS: All right. In other words, these sexual crimes have a basis in nature because they are incompatible with "the increase of mankind and the continuation of the species." Yes, but that is not what Locke says. He doesn't say, "which, I suppose, have their *ground* in that." He says they "have their principal *aggravation*"[23] [from] that. So they are only aggravated by that; they do not have their ground in it. What could the ground be?

Let us turn to a later passage[24]: "what in nature is the difference betwixt a wife and a concubine?"[xxiii] "What in nature" means "what independently of positive law." The meaning in the context is: there is none. Only by virtue of positive law is there a distinction between a wife and a concubine. Here it is a bit different, but not fundamentally different. These things, adultery, incest, and sodomy, have their true ground not in the main intention of nature; they are aggravated by that. They may have their ground in the revealed law . . . So there is a connection[25] [with] the previous argument.[xxiv] If the model of the natural law regarding parents and children is supplied by the brutes,[26] [then] [it] is a necessary consequence[27] [that] only the care for children is natural. Whether the parents are married, whether they are brother and sister and so on is absolutely irrelevant as far as beasts [are concerned].

There is another passage which I can quote to you. Locke[28] [says] here, "opinions and the actions following from them" which "have a title . . . to toleration," "that men may work or rest as they think fit; that polygamy or divorce are lawful or unlawful . . . "[xxv] Now here of course he doesn't[29] [say] hedonism. But polygamy and so forth, if you take the background of the discussion in the seventeenth century, is one step [. . .] self-preservation is the fundamental principle as later on in the book it is, there is of course no reason other [. . .] and it is not completely unintelligible. Of course, Locke's argument is very careless, but is it not also true that the preponderance of the father within the family was a part of the whole tradition, both Greek and biblical? Surely, when Filmer spoke of political things, of ruling, he forgot about the mother, because the mother was not the governor of the family but the father

[xxii] *First Treatise*, sec. 59.
[xxiii] *First Treatise*, sec. 123.
[xxiv] That is, the argument in sec. 56.
[xxv] Quotations are from the *Essay on Toleration*, currently available in Locke, *Political Essays*, ed. Mark Goldie (Cambridge: Cambridge University Press, 1997), 140.

was. I don't say that Locke is not right in saying that . . . commandments have no place whatever . . . but it is easily intelligible that people didn't mind the omission of that, once they were willing to listen to a monarchistic argument based on the Bible altogether. You see, sometimes blunders are not noted if they fit into one's preconceived desires. Surely you wouldn't need much intelligence to notice that.

Now he gives in the sequel a number of biblical quotations in which the relations and the rights of the parents are discussed. After having finished these[30], he makes the following statement: "Here not the father only, but the father and mother jointly, had power, in this case, of life and death."[xxvi] So there is then biblical evidence for a power, not indeed of the father alone but of the father and the mother jointly, a power of life and death. That is, after all, the theme; that there is some paternal power is conceded by everyone, but is it a power of life and death? That is of course a crucial part of Filmer's argument. The father must have, or the parents must have, power of life and death if the father, i.e., Adam, should have power of life and death over his whole posterity, and therefore the present king should have such power. Therefore the question is very much whether the Bible gives power of life and death to the father and mother. Here in one case—what is that case? The last quotation.

Reader:
"And it shall come to pass, that when any shall yet prophesy, then his father and his mother that begat him shall say unto him, 'Thou shalt not live,' and his father and his mother that begat him shall thrust him through when he prophesieth (Zech. xiii. 3)."[xxvii]

LS: So that refers to prophecy. In the case of prophesying of a religious . . . we can say father and mother had the power of life and death: the Old Testament. But the question is whether that is sufficient. Now there are altogether nine quotations here, and if we turn to the central one, which is a quotation from Deuteronomy xxi:18ff.—

Reader:
"If any man have a rebellious son, which will not obey the voice of his father or the voice of his mother, then shall his father and mother lay hold on him and say: 'This our son is stubborn and rebellious, he will not obey our voice'—"[xxviii]

LS: Now if you look up the context in Deuteronomy, you see the procedure was this: this rebellious son or juvenile delinquent was brought before the community as a whole and was then publicly stoned. In the text of the law there is nothing said about an examination of the claim of the parents, so if you take the letter of the passage, it means this. It had to be done publicly, I suppose in order to prevent impossible things, but the judgment that the son deserves death was entirely the father and mother's. Now if the judgment was entirely theirs, then they had power of life and death. What Locke is indicating by these things is that this great [parental][31] power—not power of the father alone but power of the parents—does have a biblical basis. Needless to say, it also had a Roman basis . . . But in this important point, the question of the power of life and death, Filmer had some basis, which won't be of great help to his Adamitic king for other reasons, but this particular element is important. From Locke's point of view, such a power is of course impossible. The main point he draws is of course the joint rule of father and mother, and not the rule of the father alone.

[xxvi] *First Treatise*, sec. 61.
[xxvii] *First Treatise*, sec. 61.
[xxviii] *First Treatise*, sec. 61.

We cannot possibly read everything, so let us turn to paragraph 67, which is crucial, where he sums up the whole thing. Let us read from the beginning.

Reader:
And thus we have at last got through all that in our author looks like an argument for that "absolute, unlimited sovereignty"[32] which he supposes in Adam; so that mankind ever since have been all born slaves, without any title to freedom. But if Creation, which gave nothing but a being, made not Adam prince of his posterity, if Adam (Gen. i. 28) was not constituted lord of mankind, nor had a private dominion given him exclusive of his children, but only a right and power over the earth and inferior creatures in common with the children of men; if also (Gen. iii. 16) God gave not any particular power to Adam over his wife and children, but only subjected Eve to Adam as a punishment, or foretold the subjection of the weaker sex in the ordering the common concernments of their families, but gave not thereby to Adam, as to the husband, power of life and death, which necessarily belongs to the magistrate; if fathers by begetting their children acquire no such power over them; and if the command, "Honour thy father and mother," give it not, but only enjoins a duty owing to parents equally, whether subjects or not, and to the mother as well as the father—if all this be so, as I think by what has been said is very evident, then man has a *natural freedom*, notwithstanding all our author confidently says to the contrary—

LS: Let us stop for one moment. Locke says that if Filmer is wrong all along the line, we have established the natural freedom of man. And then he changes from an *if*-clause to a *since*-clause, because it is not sufficient to refute Filmer . . .

Reader:
since all that share in the same common nature, faculties, and powers are in nature equal and ought to partake in the same common rights and privileges, till the manifest appointment of God, who is "Lord over all, blessed for ever," can be produced to show any particular person's supremacy, or a man's own consent subjects him to a superior.[xxix]

LS: Now let us stop here. So in other words, men are by nature equal, because they all "share in the same common nature, faculties, and powers." That they may share in these powers to different degrees is simply dismissed, completely disregarded. Locke will take that up in the *Second Treatise*, these certain passages, but here he simply disregards them. And now he says this natural[33] *equality* can be altered by God's appointment, or by man's own consent, by setting up a government to introduce, of course, inequality. The government can command you: it is your superior, and therefore, it is an inequality. But there is a strange relation between this first *if*-clause and the *since*-clause. With regard to this "since" argument, if Filmer had had a point, what would have become of this fact, manifest to reason according to Locke, that men are in nature equal? If the Bible were to teach the opposite—because Filmer's argument is said to be based on the Bible alone—what would happen? If Filmer had had a good argument, what would happen to the natural equality of man? Locke had indicated it to you. The natural equality can be abolished by God's appointment, and it is a mere question of fact whether God did or did not make such an appointment. It is a mere question of fact and not a question of principles. That is very important. I don't know whether you noticed this remark here: "the power of life and death, which necessarily belongs to the magistrate." That means, in plain English, to use a Hobbes–Lockean favorite phrase, that

[xxix] *First Treatise*, sec. 67.

prior to civil society, in the state of nature, there cannot be a power of life and death. What is the teaching of the *Second Treatise?*

Student: That [if] anyone[34] steps on or takes some of your property, then you may kill him.

LS: In the state of nature every man has the executive power of the law of nature, as he puts it. This executive power includes, in the case of sufficiently heinous crimes, the power of life and death. This is one of the clear contradictions between the two *Treatises* which has to be considered. Why does Locke make this overstatement here? In order to deny any power of life and death of the parents. Power of life and death is possessed only by the magistrate, by the political authority, and in no way by the domestic authority. Clearly contradictory to the *Second Treatise.* The situation is this. On the basis of the scriptural argument, which is the basis here of the *First Treatise*, the power of life and death exists—the power of life and death in the hands of the parents exists. You only have to look up the passages from the Old Testament which he quoted.

Now let us see which other points I can mention. Let us turn to the sequel, to chapter 7. Now what is the argument of chapter 7? Filmer says that Adam ruled by virtue of both fatherhood and property. Locke argues that if this is so, Adam's monarchy came to an end by Adam's death. Why? Well, parental power is acquired only by begetting. But Cain did not beget his brother, nor did he beget Eve. Therefore the power over all men then existing which Adam possessed came to an end. Cain's rule over his brothers can then have been based only on his being the owner of the whole world, on Adam's property. But as is admitted, Adam had already allocated private spheres of property to his sons; therefore this argument is not valid . . .

On page 57, paragraph 74, we see the first time that Locke begins to question the right acquired by begetting alone: "For if a father by begetting, and no other title, had natural dominion over his children, he that does not beget them cannot have this natural dominion over them; and therefore be it true or false that our author says (*O*. p. 156) that 'every man that is born, by his very birth becomes a subject to him that begets him,' this necessarily follows—"[xxx] Here he leaves it open for the first time, and in the *Second Treatise* he will make it perfectly clear that mere begetting cannot give parents any power.

Now he speaks here again, paragraph 75, of the two titles of property, and then in paragraph 77[35] he speaks of two distinct independent powers, one arising from fatherhood and the other arising from property. But if we disregard the application for one time, of what does this expression,[36] "two distinct independent powers," [remind]—a great issue?

Student: Well, among some of the writers, for example, Hobbes,[37] the Kingdom of God and the kingdom of Man.

LS: Well, generally speaking, power temporal and power spiritual could be conceived of. The question I submit to you for your consideration: whether there is not perhaps in Locke's argument a kind of subterraneous part in which what on the surface is a mere criticism of fatherhood and property is not also a discussion of this other dualism, where probably fatherhood would correspond to the spiritual and property to the temporal power. The latter would be easily intelligible, because in the teaching of the *Second Treatise*, as you know,

[xxx] *First Treatise*, sec. 74.

civil or temporal government is defined as the power related to property, to the protection of property. But we cannot go into this here.

Chapter 8, ["Of the conveyance of Adam's sovereign monarchical power"], shows this fundamental difficulty in Filmer's argument:[38] even if Adam had such a sovereign monarchical power that the power must be conveyed to later princes, including the princes now,[39] how can it be conveyed? The difficulty is infinite. Filmer is compelled to admit a right to princely power derivative from usurpation. Now this conclusion shows the absurdity of the whole construction.

Now we should say a few words about chapter 9. There is very much in this chapter, although I don't know how much we can do with it. In paragraph 81.[40]

Reader:
Though it be ever so plain that there ought to be government in the world, nay, should all men be of our author's mind that divine appointment had ordained it to be "monarchical," yet, since men cannot obey anything that cannot command, and ideas of government in the fancy, though ever so perfect,[xxxi] cannot give law nor prescribe rules to the actions of men, it would be of no behoof for the settling of order and establishment of government in its exercise and use amongst men, unless there were a way also taught how to know the person to whom it belonged to have this power and exercise this dominion over others.[xxxii]

LS: The *person*; if we do not know the person. Men cannot obey anything that cannot command. Locke omits here one possibility. He speaks here only of ideas in the fancy. But what is the common term frequently applied to Locke's doctrine of government? Rule of laws. What about laws? Can laws command? How does the difficulty appear in the case of laws? You don't know how to act in a certain case, say, in drawing up your tax declaration. You find out what the law is regarding the matter. That is sufficient. But what is implied in that, in this[41] [text]?

Student: That there is both a human agency to interpret and to enforce the law.

LS: Yes, but when we speak of a law, we speak of a law passed by Congress. That is understood. Without these human beings, this body of men, this thing would not be made into law. So this old story, which we know so clearly from Aristotle and Plato, that we ultimately come back [to] as far as the analysis of human affairs as such is concerned[42] [with] ruling human beings. There, ruling human beings may very well be the community as a whole, but still that's the community. But it is so in almost all modern cases that it is not the community as a whole but some man or body of men that does the commanding. It is quite striking to find this passage in Locke, and it should not be forgotten by those who speak of the rule of law without any further considerations.

We must now come to the crucial passages to which today's report has already[43] referred. Now what is that? Let us first see in paragraph 85.[44]

Reader:
In both these rights—

[xxxi] In the original: "ever so perfect, though ever so right"
[xxxii] *First Treatise,* sec. 81.

LS: Meaning the right of fatherhood and the right of property.

Reader:
there being supposed an exclusion of all other men, it must be upon some reason peculiar to Adam that they must both be founded.

That of his property our author supposes to rise from God's immediate donation (Gen. i. 28), and that of fatherhood from the act of begetting. Now in all inheritance, if the heir succeed not to the reason upon which his father's right was founded, he cannot succeed to the right which followeth from it—[xxxiii]

LS: Now what he means is this. Adam possessed universal property, allegedly by virtue of a grant made in Genesis 1:28. But the grant was, according to Filmer, made only to Adam. Hence, with the death of Adam, what would happen? Locke says that according to common sense, the property would revert to its original owner, to God, on Adam's death, if the grant had been made only to Adam. But Locke contends that the grant was in fact made to the whole human race and not only to Adam. Then there is no reason to assume that the donation went only to one child of Adam, as Filmer assumes, excluding all the rest. So any title of Adam based on property is unfounded, because either the grant was given to Adam and then the property reverted to God, [or], if it was given to the human race, all children of Adam equally inherited, and therefore no claim to power can be based on the inheritance of property. Locke now interprets the grant made in Genesis 1:28. Paragraph 86.

Reader:
But not to follow our author too far out of the way, the plain of the case is this: God having made man, and planted in him, as in all other animals, a strong desire of self-preservation, and furnished the world with things fit for food and raiment and other necessaries of life, subservient to His design that man should live and abide for some time upon the face of the earth, and not that so curious and wonderful a piece of workmanship by his own negligence or want of necessaries should perish again presently, after a few moments continuance—God, I say, having made man in the world thus, spoke to him, that is, directed him by his senses and reason, as he did the inferior animals by their sense and instinct,[xxxiv] to the use of those things[xxxv] which were serviceable for his subsistence and given him as the means of his preservation; and, therefore I doubt not but before these words were pronounced (Gen. i. 28, 29)—if they must be understood literally to have been spoken—and without any such verbal donation, man had a right to an use of the creatures by the will and grant of God; for the desire, strong desire of preserving his life and being, having been planted in him as a principle of action by God Himself, reason, "which was the voice of God in him," could not but teach him and assure him that, pursuing that natural inclination he had to preserve his being, he followed the will of his Maker, and therefore had a right to make use of those creatures which by his reason or senses he could discover would be serviceable thereunto.

[xxxiii] *First Treatise*, sec. 85.
[xxxiv] The original transcript records a marginal note indicating that the Cook edition omits the following words: "which he had placed in them to that purpose, to the use of those things." These words are indeed printed by Laslett but are absent from both the sixth edition of 1764 and from the text printed in *Works*.
[xxxv] "to the use of those things" does not appear in the Cook edition.

And thus man's property in the creatures was founded upon the right he had to make use of those things that were necessary or useful to his being.[xxxvi]

LS: We see that Locke's interpretation disregards completely the text but claims to give the meaning, the rational meaning, of the text. And the consequence is this. God's grant as a positive grant is wholly superfluous. Man's reason and natural inclination alone suffice to tell him clearly what in this grant is not told clearly. Don't forget that according to Locke's long disquisition in the earlier part, Genesis 1:28 . . . about cattle whereas reason would of course say cattle. And therefore reason speaks more clearly than the biblical text.

Now self-preservation, this strong desire, gives men the necessary orientation. In the sequel Locke will enlarge this thought. He has spoken here already of the things which are *necessary* or *useful* to his being. Now men need water and very little food, i.e., things which are really necessary. But quite a few things are useful to his being, so that can be enlarged. And therefore[45] in the sequel (paragraph 87), he speaks of "the comfortable preservation of their beings." That is a more adequate formulation of what Locke means. Man has by nature a right to self-preservation, which, under favorable conditions, naturally expands into a desire for comfortable self-preservation. And that of course allows for all refinements, gadgets, and so on [that] you could possibly think of. That is the true basis of Locke's political teaching, as will appear more and more.

The conclusion, as far as the immediate argument is concerned, is this. Every man, not only Adam, has by nature the right to property on the same ground as Adam had, that right being the right to comfortable self-preservation. Therefore no right to rule, no sovereignty, can be based on the alleged grant of God to Adam in particular. Now the other question arises, a question connected with that of property, the right of inheriting property. According to Locke's teaching here, the right of inheriting property is also a natural right. It is obviously a very different story whether we have by nature a right to acquire those things which are necessary or useful for our self-preservation and whether we have a right to be heirs to our parents' property. How does Locke try to establish that?

Student: That children have a need for their parents' property.

LS: In other words, begetting, the one-sided act of begetting, is not concluded with the act of begetting. It is accompanied by an obligation, the obligation to bring up the children. And therefore the property of the parents is to be used not only for their own self-preservation or comfortable self-preservation but also for the proper and decent upbringing of the children. But what about this situation: the children are grown up and can very well take care of themselves. Why should there be a rightful claim on the part of these children to inherit the property of the parents? We are speaking of children who are in their thirties, let us say, and can very well take care of themselves, so they are really no longer in need of being fed by their parents. What about the right to the parents' property on the part of the children? Does it follow from natural law?

Student: It is not altogether clear that the parents are obliged to dispose of their property to their children when they die, even if they are in need. It seems to be a possibility left open that they can grant it otherwise.

[xxxvi] *First Treatise*, sec. 86.

LS: Which passage do you mean?

Student: In paragraph 87: "But if anyone had begun and made himself a property in any particular thing (which how he or anyone else could do shall be shown in another place), that thing, that possession, if he disposed not otherwise of it by his positive grant, descended naturally to his children—"

LS: In other words, that means this. But still, in each case the question is this. Fathers . . . are free at their death or after the children have grown up to leave their property to whomever they want.

Student: And even before their children are grown up.

LS: Yes, but what about the duty to bring up the children?

Student: It seems less a duty to bring up the children than a right upon the part of the children to be brought up, which isn't exactly the same thing. There is simply a need on the part of the children to be brought up.

LS: But look at page 67, bottom, [paragraph 88]: "Men being by a like obligation bound to preserve what they have begotten, as to preserve themselves, their issue come to have a right in the goods they are possessed of." I think there is an obligation of the parents. The obligation could in reason not be extended beyond the time when the children are grown up and can take care of themselves. After that time, the parents should be—and are, according to Locke—perfectly free to leave it to whomever they please. But why does he say the property descends naturally to the children if the father has not otherwise disposed of it by his positive grant? Why is the preference given to the children in such cases?

Student: If you have already extended the right beyond mere self-preservation into comfortable self-preservation, it would seem that the children would be more comfortable and comfortably provided for.

LS: In other words, the legal presumption that most people are more concerned even after their death with their children than with other people. Something of this kind might also apply in these cases. No, I think the construction would ultimately be this. If property is . . . as Locke had no doubt, then you give the property in full ownership so that the property owner can dispose of it as he sees fit afterward. That increases the attractiveness of property, and is therefore perfectly valid. Disposition of the property after one's death belongs to the property owner. Then the legal presumption [favors the children];[xxxvii] in the silence of the property owner, it must be presumed that he has willed it to his children, because if he had very strongly disapproved of his children getting it, he had plenty of time previously to say so.

Student:[xxxviii] It seems that a more comfortable life would mean to fatten their children and eat them . . .

LS: But the children also want to live.

[xxxvii] In the original transcript: "indistinct."
[xxxviii] Evidently Muhsin Mahdi, as emerges shortly.

Student: But then he says that this inheritance is by the laws of God, by the appointment of God, and by the laws of the land. The natural thing would be merely self-preservation. I think that links quite well with this problem.

LS: But the children too have the right to self-preservation.

Student: That is secondary to the preservation of the species.

LS: I see now what you mean, although you have stated it very shockingly. Let us put it this way. If in a condition of famine it is understood that the whole family cannot survive, do not the parents have the right to eat their children in order to propagate again afterwards? I believe that from Locke's point of view no objections can be made to this shocking proposal, if you meant that. But if you mean they are both well and have plenty to eat, then I don't see how it could be defended.

Student: Well, that links with this quotation that Locke cites from this man about South America.[xxxix] . . . And it has exactly to do with eating their children not because of necessity. You fatten them up so well so that they will be more delicious when you eat them. Now he says that it is only man that does this, man alone over against the animals. The animals would emphasize the preservation of the species. Man alone seems to kill his children, expose them and eat them. It would seem to be an argument that man alone has the strongest desire for self-preservation.

LS: I see now what you are driving at. I believe, if I understand Locke, one would have to state it somewhat differently. Men, being more intelligent than the brutes, would not follow their blind instincts of preservation of the species but would make this simple calculation: if he survives with this woman—because we can't yet speak of a wife at this stage—they can generate new children and in the meantime survive. Whether it is a very sound calculation is of course another matter. For example, how long could they live on these babies? If you speak about this in a practical way, you have to figure it out practically. Still, that he is capable of such a calculation, that alone makes it possible to sacrifice anything else, including his own children to self-preservation. A brute is not capable of this calculation. If you say that there are pigs and rabbits who eat their young all the time, that has other reasons, as far as I know. I think that is a kind of mistake, I would say, that they sometimes do this.

Student: Why do you specify in this terrible situation that the parents eat the children? If we are talking about calculation, why don't the children eat the parents?

LS: Well, I think Mr. Mahdi[xl] was assuming very young children, children who would be physically unable to kill their parents. In this other situation, it would really be a war of everybody against everybody.

[xxxix] *First Treatise*, sec. 57.

[xl] Muhsin Mahdi (1926-2007), noted scholar of Arabic literature and Islamic political philosophy, who studied with Strauss at the University of Chicago and earned his Ph.D there in 1954. He is author of *Ibn Khaldun's Philosophy of History: A Study in the Philosophical Foundation of the Science of Culture* (George Allen and Unwin: London, 1957). Mahdi taught at the University of Chicago from 1958 to 1969 and was apparently sitting in on Strauss's seminar at this time.

Student: This was what I was trying to get at, that it wasn't a question of right on the part of the parents, but strictly accident that the parents in this case are able to do this. In another case a young, strapping son could easily get rid of his father.

LS: That is quite true, but still there is a question of [right] . . . What you suggest concerns what Mr. Mahdi said, although I still have to overcome a shock in thinking about it. The right is that of self-preservation. That is the overriding right. If we agree on that, we agree, I think, on the main point. But that would only concern the point which you made. According to Locke, in the case of man, and only in the case of man, is the inclination toward the propagation of the species, and therefore the rights and duties connected with that strictly subordinate to the right of self-preservation. Man alone is a calculating animal . . . Is this clear? I think this is really very important.

Student: It's clear, but with Mr. Mahdi I am still not altogether convinced that it is only in cases of necessity that this question arises [. . .] so specifically a matter of taste that the children were raised because they were a delicacy.

LS: I see now. What Mr. Mahdi is driving at is this: that precisely on the basis of Locke, these most shocking practices are defensible. Locke says that Filmer makes use of this terrible thing and that it is a consequence of this abominable principle of Filmer's, but it is really also the consequence, and more obviously the consequence, of Locke's own principles.

Student: As to the point raised, I'm sure the parents wouldn't develop the power of the children to fight. I'm sure they would only develop their meat for eating like you do with an animal. They wouldn't take their chances fighting them, and therefore it is not really self-preservation.

LS: But the question is whether . . . The reason I gave you the case of the starvation diets only and not luxury is because I think Locke assumed that there is really a natural instinct in man to propagate the species and to bring up the children. You know, people get accustomed to these youngsters and love them, and then something very special is needed, either a fantastic superstition or extreme need, to break down this affection.

Student: But he simply speaks of the desire for copulation as the source for begetting children. This is his argument against Filmer.

LS: But that was a very special case, that of these South American Indians.

Student: In the case where it is a question of making or creating the children, he says that the parents do not design the children, but rather they usually come by accident. Moreover, that the desire is entirely dissociated from the function.

LS: But that is of course not the whole story. Then they are born and then they are around, and then there are certain complicated consequences. I'm sure that Locke honestly and on solid grounds disapproved of the fattening of children. The example he gives even confirms my interpretation. That was a very special case; they took captive women and only the children they bred with these captive women did they eat, not their own children. So this passage here is in favor of greater humanity than you are willing to grant him. I'm sorry we have to discuss this. I'm sure that all the infinitely horrible consequences following from the principle of self-preservation alone have to be imputed to Locke, as they have to be imputed

to Hobbes. But they would say in their defense: We only admit what people in fact do if they are reduced to extremities.[xli]

At the end of paragraph 90, there occurs the term "the state of nature." If I am not mistaken, that is the only occasion in which the term occurs in the *First Treatise*, whereas "state of nature" is the key term in the *Second Treatise*. And the relation of the two *Treatises* can be very well described by this fact: practically complete silence about the state of nature in the *First Treatise*, where the scriptural argument and its refutation is the main concern, and preponderance of the state of nature in the *Second Treatise*, where the argument is meant to be strictly rational. I will discuss this point on a later occasion.

I draw your attention only to a few remarks on pages 70 and 71 which show how right the contentions of Mr. Mahdi were regarding the absolute primacy of self-preservation as distinguished from the preservation of the species. From the right of self-preservation and comfortable self-preservation there follows the right to property. But who is to be benefitted by the property you acquire for your comfortable self-preservation?[46] "Property . . . is for the benefit and sole advantage of the proprietor."[xlii] On page 71: "the son cannot claim or inherit it by a title which is founded wholly on his own private good and advantage."[xliii] Property, precisely because it is based on the individual's right to *his* comfortable self-preservation, is founded wholly on the individual's own private good and advantage. The heir or the children come in only accidentally. Up to a certain point, the bringing up until they are capable of taking care of themselves is a kind of natural duty, certainly for Locke too, but that is about all. To that extent Locke is really the originator of the extreme rugged individualism. But this teaching has also another side: this rugged and radical individualism, wholly on its own private good and advantage, accidentally but necessarily is beneficial to all. This whole society is better off if all are passionately concerned, each is passionately concerned with his own self-improvement regarding property. And you can say that is the true justification of this individualism. But that will become clearer when we come to the chapter on property in the *Second Treatise.*

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[1] Deleted "which."
[2] Deleted "which has."
[3] Deleted "And."
[4] Deleted "was."
[5] Deleted "since"
[6] Deleted "on."
[7] Deleted "on."
[8] Deleted "prefer."
[9] Deleted "an."
[10] Deleted "(page 43-44)."
[1111] Deleted "line 16 from top."
[12] Deleted "(page 62)."
[13] Deleted "paragraph 50, page 39."
[14] Deleted "nor and also."
[15] Deleted "of."
[16] Deleted "(55)."
[17] Deleted "(page 43 bottom)."
[18] Deleted "men."
[19] Deleted "(bottom of page 44)."

[xli] There is a break in the tape at this point.
[xlii] *First Treatise*, sec. 92.
[xliii] *First Treatise*, sec. 93.

[20] Moved “I think.”
[21] Deleted “59.”
[22] Moved “is.”
[23] Deleted “for.”
[24] Deleted “(page 89, paragraph 123).”
[25] Deleted “between.”
[26] Moved “that.”
[27] Moved “then.”
[28] Deleted “quotes.”
[29] Deleted “give.”
[30] Deleted “(page 47 middle).”
[31] Changed from “paternal.”
[32] Deleted “described, sect. 8”
[33] Deleted “*inequality*.”
[34] Deleted “who.”
[35] Deleted “(page 60).”
[36] Moved “remind.”
[37] Deleted “in.”
[38] Moved “of the conveyance of Adam’s sovereign monarchical power.” Deleted “the difference being.”
[39] Deleted “and.”
[40] Deleted “(page 63 top).”
[41] Deleted “tax.”
[42] Deleted “to.”
[43] Deleted “been.”
[44] Deleted “page 64 bottom.”
[45] Moved “Locke.” Deleted “says.”
[46] Deleted “See paragraph 92, page 70, line 2.”

On Locke's *First Treatise*, chapters 10-11
Session 8: January 29, 1958

Leo Strauss: Let me try to restate what you say.[i] The first impression is this, that Locke emphasizes that Filmer's argument is entirely scriptural—which, of course, as we have seen, is not true. The mere fact, for example, that power over the children is acquired by begetting is taken from Grotius and, let us say, from a kind of Roman tradition somehow, but certainly not from the Bible. And there are other points. But Locke insists that Filmer desired and intended to build his whole argument on the Bible, and he gives Filmer therefore a much more scriptural character than it possesses—that is, Filmer's argument a much more scriptural character than it possesses. Now on this basis, his argument has this character. [LS writes on the blackboard] Filmer as different from Bible: that is the thing which he ostensibly does. But a closer consideration shows that granted he shows to some extent that Filmer's scriptural argument is atrocious, there is something else to be added. That of course is not so visible. But we have seen some examples last time: for example, the thesis that the paternal power, or the parental power, includes the power of life and death, which according to Locke's explicit assertion has no scriptural basis whatever, is shown by Locke's own quotations and by the arrangement of these quotations to possess a scriptural power, e.g., the passage about this naughty or wicked son whom the father and mother bring before the community and he is stoned. You remember. According to the biblical text, this depends entirely upon the judgment of the parents. The parents do possess in this case such a power. However this may be, to come back to the argument: If one looks somewhat more closely, one sees that while Filmer does not have a sound biblical basis, Locke's own argument is different from the biblical point of view. But if one digs still more deeply, one will come across a much more interesting proposition, which cannot be true in every little point but is fundamentally true, namely, that Filmer's view is fundamentally in agreement with the biblical position. And therefore, by criticizing Filmer, not of course in this or that little point but in the fundamental propositions, Locke is really criticizing the biblical position as a whole. And this refutation, or alleged refutation, of the Bible is the basis for a purely rational political teaching to be sketched in the *Second Treatise*. But even in the *Second Treatise* it is only sketched; one has to look very carefully to get the pure rational teaching out of that.

You mentioned this point about the obscurity of scripture. Surely that is one important part of the argument. If the teaching of the Bible is obscure, it can't be of any help. We have no other star and compass, as he puts it, except reason. This is an important part, incidentally, of the argument in the *Essay Concerning Human Understanding.* What he says there about the obscurity of language as a major impediment to progress and understanding applies particularly to the biblical language, as I think can be shown there. Now you also saw this antibiblical intention in Locke in the stories of the Tower of Babel as well as in his account of the Judges. In talking about the Tower of Babel, the fact that this was a rebellion is in no way mentioned or alluded to. It was an act of a free people; everything was fine: Why should they not make that decision? And in the case of the judges, they were elected by the people in free elections. The divine vocation is alluded to in an ambiguous expression but [is] in no way important to his argument.

[i] Strauss responds to a student's paper, read at the beginning of the session. The reading was not recorded.

We have now to turn to some details. I remind you again of the broader context. Now there are two natural law doctrines. We must never forget that. We have seen that in the early essays, and that is of course the background, and to some extent the content, of the *Two Treatises*[1] [themselves]. Now let me describe these two alternatives. The fundamental premise of the older view is providence. The opposite of that, we could say, is the denial of providence. But I prefer a positive expression, and I shall call it "state of nature." The meaning of the term will be explained later. In connection with the state of nature, think of the [famous] Hobbean[2] story: a state of war of everybody against everybody, a state of poverty and misery in every respect. That is the state in which man finds himself naturally. All the pleasantnesses and amenities of life are due to man's own effort.[3] Fighting against his starting point, his origin, i.e., the state of nature, [man] makes himself tolerably happy. I will explain the meaning of the term later.

The second point I would show as[4] [follows] [LS writes on the blackboard]: conscience and demonstration, by which I mean this. According to the traditional view, man has by nature awareness of the moral principles. There is a more technical term used for that in scholastic literature, but we don't have to go into that and can use this more popular term, "conscience."[ii] There is such a thing as conscience which all men have . . . On the other hand, demonstration means [that] all our knowledge of moral principles is acquired by our own effort, by studying the universe, by studying man, and only by that do we acquire some awareness of moral principles. In the formulation of Hobbes, the laws of nature, the moral laws, are "but conclusions."[iii] That has to be taken very literally. There are no indemonstrable principles of morality, as there would be according to the Thomistic teaching. They are but conclusions from principles which in themselves are morally neutral. Sense perception, the study of the universe and so on, as Locke sketched out in the early essays, bring us to the realization of moral principles.

And the third point is that the key term describing human excellence in the older view was "virtue." Now the term "virtue" is used also by Hobbes and Locke. But in order to make the difference clear, I will replace it by its concrete meaning. The concrete meaning now is peaceableness. Nothing going beyond peaceableness has any moral status. Now that means a lot of things. For example, you can have peace, absence of violence, and so on, on a very low level. Without any higher considerations, you can have peace and external order on any level. Therefore it is better to rephrase it by "peaceableness." You could also say "sociability": to be nice fellows, good sports, and so on. No better term, however, occurs to me at the moment. A narrowly conceived social virtue takes the place of virtue in the full sense.[iv] And therefore, from this point of view, i.e., the Hobbes–Locke point of view, the character of marriage and such things is wholly undetermined. Probably you need some arrangement in order to avoid constant violence, but whether that is done via monogamy, via polygamy, via trial marriages, and so on, that doesn't make any difference. He leaves that entirely to the human legislator to decide. There is no institution which has intrinsic superiority to the other, whereas according to the older notion, very incisive things—for example, regarding marriage, or for that matter, regarding property and the use of property—were implied. In modern times, the demands made by natural law are extremely limited, to the bare minimum needed for mere sociality.

[ii] Strauss is referring to the term "synderesis," which serves the function he describes in Aquinas's natural law theory. See *Natural Right and History*, 157-64.

[iii] A reference to Hobbes, *Leviathan*, chapter 15, end.

[iv] The reader may wish to consult here Strauss's discussion of "peaceableness" in connection with both Hobbes and Locke in *Natural Right and History*, 187-88.

Now a word about the term "state of nature." When you read literature on political theory or history, you find constant references to the state of nature, say, in Lucretius's poem, or among the sophists, and so on.[v] But the strange thing is that in the way in which it is now understood, it occurred for the first time clearly and importantly in Hobbes. Hobbes still excuses himself for using that term. He says somewhere, I think in the preface to *De Cive*: "If I may be permitted to call it a state of nature."[vi] But the term "state of nature," we can say, did not exist prior to Hobbes. I am perfectly willing to be corrected if my information is incorrect.[vii] I can only say this to the best of my knowledge. Prior to Hobbes the term didn't exist in political theory. If such an equivalent was used, then it was of course in the Aristotelian sense and meant the healthy state of a being, the natural state of a being. That was not a particularly political term; it applied to any being. The natural state, say, if we have our two arms and two legs; and the state in which that was imperfect, deprived, that was something unnatural, defective. The true prehistory of the term "state of nature" leads to Christian theology.[viii] And here you have this distinction: a state of nature which is subdivided into a state of pure nature or uncorrupted nature and a state of fallen nature. And that is distinguished from the state of grace. I disregard other divisions; this is sufficient for our purposes. The state of nature—for example, when you read Suárez, he also speaks of a state of nature. But what does this mean? It means, for example, classical antiquity: those states which existed there were in the state of nature, which means there was no grace. But [the] state of nature is not a presocial or prepolitical state. The crucial point is the absence of grace. But in addition—these subdivisions are very important—the state of pure nature meaning prior to the Fall; if man prior to the Fall did not have grace, which is denied by Catholic theology, or in the state of fallen nature after the Fall [. . .][ix] Now what Hobbes does is this. He makes this distinction: state of nature and state of civil society. I think you see immediately what the Hobbean distinction means. Well?

Student: The state of perfection would be the state of civil society.

LS: Yes. But still, what is the difference? In the first place, the distinction between the state of pure and fallen nature is dropped. The Fall is nonexistent or irrelevant, and the remedy for the inconveniences of the state of nature, to use Locke's phrase, is not grace but government.[5] [This] is the meaning of that. Therefore, as long as this notion prevailed, the crucial question was how to reconcile this new scheme with the biblical report. This one [LS points to the blackboard] could be reconciled with the biblical story because it was derived from it. Where is the state of nature in the Hobbes–Lockean sense located in biblical history? This is a very necessary question, and whenever you raise this question you will see that the modern distinction of state of nature and state of civil society is really incompatible with the Bible. Now this is obscured by another fact, and that has something to do with the difference between great thinkers and universities. [There are] the men who established this doctrine:

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[v] See Lucretius, *De rerum natura* 5. 925ff. For the sophists, see especially Plato, *Protagoras* 320c-322d.

[vi] Strauss appears to have in mind Hobbes's reference to "the state of men without civil society, which state we may properly call the state of nature." See Thomas Hobbes, *Man and Citizen*, ed. B. Gert (Indianapolis: Hackett, 1991), 101.

[vii] Strauss means that the term does not exist in *political philosophy* prior to Hobbes, as becomes immediately clear from what he goes on to say here.

[viii] See, for example, Aquinas, *De Veritate*, Question 19, Article 1, Answer 13, where he indeed speaks of a "*statum naturae*."

[ix] The transcript does not have ellipses but it appears that this sentence is incomplete.

Hobbes, Locke, Rousseau. But then they made a certain impression on university professors; and the university professors did not have the courage, boldness, impudence, however you call it, of these men, and therefore they made a kind of compromise between this modern thought and the traditional teaching. And the simple formulation is this: the concept of the state of nature does not refer to anything real or actual. The state of nature is a mere hypothetical construct. That you find in all these textbooks of the famous university natural law teachers of the seventeenth and eighteenth centuries. By thinking of the state of nature as a purely hypothetical construct, the question of its place in history was avoided. But it existed and it asserted itself. I think one cannot understand the emergence of a philosophy of history in the eighteenth century if one does not keep in mind that problem. But I can only mention that in passing here; we may discuss that in the next quarter in the seminar on Kant.

To come back to our question: What does it mean that it is a hypothetical construct? It means this. We try to define what rights and duties man enjoys under natural law alone, disregarding all positive law, human or divine. The state of nature is the state in which man finds himself if he possesses only natural law rights and duties. That was the meaning of this. Now while this applies, of course, to some extent to Hobbes–Locke–Rousseau, in Hobbes–Locke–Rousseau the question of the state of nature, of its legal character, is inseparable from the assertion of its actuality. It is for Hobbes–Locke–Rousseau at the same time an assertion regarding the origins of man, the actual origins of man. The state of nature replaces the biblical account of the origin, that is to say, the story of creation and of paradise and the Fall. In my very sketchy historical survey, there is one difficulty which someone must solve sometime—someone who knows some Latin, of course. As far as I can see, John Wycliffe uses the term "state of nature" in a somewhat different sense than it was traditionally used.[x] And that, I think, someone should clarify on some occasion. I don't think it is in any way the Hobbes–Locke–Rousseau notion, but there is a certain complication created by that. But this only in passing. Now let us then turn to the text. Or is there any other point you would like to discuss in connection with these general comments?

Student: As to this distinction between pure nature and fallen nature, did they have any other . . .

LS: Well, that is of course fallen nature. Fallen nature applies to all human beings after the Fall until the beginning of Christianity . . .

Student: Pure nature is only prior to the Fall?

LS: Prior to the Fall, yes. Even that is not literally true, but we cannot go into that. There are more subdivisions; for example, there is the state of the law, the old law, which is distinguished from the state of grace and not simply identical with the state of nature, and so on. But we can't go into that now. So for our purposes that is perfectly sufficient and, I think, makes clear the meaning of Hobbes–Locke–Rousseau's notion of the state of nature as distinguished from the state of civil society.

Student: Is it not implied that the state of pure nature is prehistorical? In a sense, it is hypothetical from the historical point of view.

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[x] JohnWycliffe (ca. 1328-1384), English theologian, dissident from the Catholic Church and reformer. Strauss seems to have in mind Wycliffe's view that the state of nature was a state of communism, a condition in which all cared for all.

LS: But the distinction between historical and prehistorical is absolutely inapplicable to the Bible, because if you take the Bible as it is meant, the creation of man and the fact that man existed in a state of purity is[6] real. By this I do not mean to say you have to take the first chapter of the Bible literally, but that men originally lived in a state of innocence is as real and as true as, say, Napoleon's defeating the Prussians in 1807. If you say the assertion of man's original innocence is mythical, then you have abandoned the biblical basis. I know that today the term "historical" is used in a very loose way.

Student: I understand that, but Hegel, for example, may speak of something real which is not historical.

LS: Give me an example. I think [it is] the other way: Hegel could say something is historical but not real. For example, that Hitler had a mistress is historical—you can prove it—but it is of course unreal in the sense that it is of no significance. You understand what really happens and what this means. That is absolutely unimportant, i.e., something like this in Hitler's private life. It is historical but not real. I don't believe he would say the opposite. The words "history" and "historical" are not biblical terms. That people today say with some plausibility that in the Bible, and primarily in the Old Testament, history has been discovered—you must have heard this many times—is an entirely different story. But this appears so on the basis of a completely nonbiblical starting point, namely, the so-called historical consciousness of the nineteenth and twentieth centuries. History would mean for the biblical authors, if they had such a word, a record of past events. The providential dispensation of which the Bible speaks is interpreted as a historical process by modern man, but [it] is not in itself that. My simple argument is that there is no Hebrew word for history, history in the sense of a historical process. In modern Hebrew they had to introduce the Latin or Greek word[7] [*historia*] and Hebraize it. The Hebrew language doesn't know of that. And similar considerations apply also to the New Testament.

Student: . . . that man became a history maker in the sense that after[ward] he began to choose between good and bad. It means it does begin with the Fall, because prior to the Fall he was not choosing, he was all the time eating the good.

LS: Do you mean to say it is something good to be a history maker?

Student: I was only saying that history does begin with the Fall, after men started to make the choice. Before this he was just guided by Providence; he did not have the exercise of free will . . .

LS: That it was an improvement. That I know very well. For example, Kant gives such an interpretation of this story, that prior to the Fall men were, as it were, still brutes, and by this Fall he acquired in a way freedom. And freedom is of course the basis of what these modern men mean by "history." After having rejected the truth of the Bible, a man can say there is some element of truth in the Bible, and then say this kind of thing. But it is not a biblical teaching. It only confuses one, I believe. It presupposes that one knows what history is, and it is not so sure that we know what that is,[8] [nor] perhaps even whether it exists in the sense in which it is asserted. History has a simple meaning if it means records of the past, study of the past, a coherent account of the past. That was the original meaning of the word, more or less. That makes sense. That existed and is necessary, and so on. But when we speak of history today in the metaphysical sense of the word, then it means not the human activity concerned[9]

with the past, with understanding and knowing the past, but it means a historical process. And this historical process is then emphatically not the same as the mysterious divine dispensation. That was indeed meant by the biblical authors, something different. Maybe it has some theological overtones today; that is possible, but it is still not identically the same. One must study this. It is a long question. I grant you this, that this problem of the state of nature, insofar as it is deliberately opposed to the biblical account of the origins, has something to do with the genesis of the modern concept of history. But this we cannot observe in Locke. That comes out only later. For example, in Kant one can see this very clearly, but I can't go into that.

Student: Why is it necessary for Hobbes–Locke–Rousseau to maintain that the state of nature is an actuality as opposed to a hypothetical construct?

LS: Because the question must be raised: What is the status of man in the universe? Very simple. Is there a just government of mankind? Divine Providence. Or as Spinoza put it: Is there justice only where just men reign? Is that not an important question, whether there is any justice actually anywhere except where you have a tolerably just human government? This enormous question is involved in the question which you just raised, whereas if you speak of a merely hypothetical construct, you evade that question. You can disregard it in certain narrow contexts, provided you take it up separate[ly], but merely to avoid it means to evade it and[10] not really to raise the deeper questions. That is to avoid it. The question which goes beyond the purely methodological and heuristic procedure concerns exactly the whole situation of man. Is he ruled by a just God or not? And what these men imply is: No. It can also be put differently: What is the origin of man? Has man been created by God in the image of God or not? The alternative can be understood in a number of ways, e.g., Darwinian and so on, but that is secondary compared with the other question. And you see that these questions of whether man is created by God and by a just God are bound to have political consequences somewhere.

Student: My question is whether there is just the one alternative for these thinkers. If there isn't a just God, is the only alternative an order derived from the state of nature? In other words, I recall in the *Essay on Inequality*,[xi] Rousseau with uncertainty discusses the state of nature, and he himself admits that he . . .

LS: Sure. I remember these passages. You have also to read Rousseau's own notes to the *Second Discourse.* Rousseau knew very well that the doctrine of the state of nature is incompatible with the biblical account. The reason why he said his account of the state of nature is purely hypothetical, the most important reason, is precisely in order to avoid the open conflict with the biblical account. That he makes rather clear. It would only require a half hour of reading this passage to settle that. It would only confirm what I say. As a matter of fact, what I said is partly based on the *Second Discourse*.[xii]

Now let us turn to the first part of chapter 10, "Of the Heir to Adam's Monarchical Power." That this is an important question, given Filmer's principle,[11] is obvious. If all government stems from Adam, then the conveyance of Adam's power to posterity is absolutely crucial. The interesting and strange thing in this chapter is the extraordinary repetitiveness of Locke. If you look on page 77, line 3: "Either governments in the world are not to be claimed and

[xi] I.e., the *Discourse on the Origin of Inequality*, also known as the *Second Discourse*.
[xii] See *Natural Right and History*, 267n.

held by this title of Adam's heir . . . or if it really be . . . the true title to the government and sovereignty,"[xiii] and so on. And the next line, paragraph 105: "either this right in nature of Adam's heir . . . is a right not necessary . . . or else—[12]"[xiv] And to some extent even the sequel is repetitive. Three times identically the same thing is repeated, and that is very strange. It makes it of course, in a way, easy reading: when you read when you are drowsy, in reading the first half of the page and wake up in the second half, you still get everything. I think such books may be more successful in a popular sense than those that do not allow you to be drowsy at any point. The question could very well be raised whether that is sufficient, whether Locke does not have a deeper intention than merely to be nice to the lazy reader. I suggest the following consideration. If you look at this threefold statement of two alternatives, the six statements altogether, you find in the central statement (the second point, paragraph 105, line 5): "or else all the kings in the world but one are not lawful kings, and so have no right to obedience." Now if you compare this with the five other statements, you see that in all the other statements Adam's heir is mentioned. In this one Adam's heir is not mentioned. Now here Locke says: If Filmer is right, there is only one lawful king in the world. By this he rises above the peculiarly Filmerian thesis, because here there is no reference to Adam's heir, and states a much broader problem. Have you ever read the assertion that there is only one lawful king in the world, or something reminding of it?

Student: There is a parallel to that in the ecclesiastical authority, only having one authority here on earth, the church of Christ.

LS: But I think even beyond the question of the church's successful government on earth, God is the king. Now that means of course, if this is understood radically, then all other kings have a precariousness, and therefore a questionable power, as is shown by the simple case of conflict. Whenever an earthly king commands something which contradicts the command of God as king, God's command has the right of way. But if you understand this in the light of the doctrine of sovereignty—that in case of conflict between different jurisdictions there must be one and only one man or body of men who have the right of way, and that is the sovereign, the sole sovereign—you arrive at Locke's conclusion. In other words, what I believe to be indicated here, and to go through the whole book, is this. It is the whole question of divine government which Locke has in mind while discussing ostensibly only the very silly doctrine of Filmer.

Now let us go on in the same paragraph, but a bit later: "for if kings have a right to dominion and the obedience of their subjects, who are not, nor can possibly be, heirs to Adam, what use is there of such a title, when we are obliged to obey without it?"[xv] Now who are those who cannot possibly be heirs to Adam? Let us look on page 81, top.

"Here, again, our author informs us that the divine ordinance hath limited the descent of Adam's monarchical power to whom? 'To Adam's line and posterity,' says our author. A notable limitation—a limitation to all mankind; for if our author can find anyone amongst mankind that is not of the line and posterity of Adam, he may perhaps tell him who this next heir of Adam is; but for us I despair how this limitation of Adam's empire to his line and posterity will help us to find out one heir."[xvi]

[xiii] *First Treatise,* sec. 104.
[xiv] *First Treatise,* sec. 105.
[xv] *First Treatise,* sec. 105.
[xvi] *First Treatise,* sec. 111.

A little later on, on the same page: "that is, in plain English, anyone may have it, since there is no person living that hath not the title of being the line and posterity of Adam."[xvii] Every human being is an heir to Adam. But what does he mean, then, when he says or speaks about kings who cannot possibly be heirs to Adam? Under what conditions . . . [xviii] That might be very useful. Now I suggest that we turn to paragraph 111[13]. He quotes Filmer here,[14] [who] says: "'That not only the constitution of power in general, but the limitation of it to one kind, *i.e.*, monarchy, and the determination of it to the individual person and line of Adam are all three ordinances of God.'"[xix] Not only the constitution but also the limitation, namely, that it be monarchy, and the determination of that monarchical power to the individual person and line of Adam, are all three ordinances of God. Locke's comment on page 81[15] begins as follows: "Here again our author informs us that the divine ordinance hath limited the descent of Adam's monarchical power."[xx]

You see, "limited," where Filmer had spoken of determination and not limitation. What could he possibly mean by that? Filmer's king is a sovereign. The term "sovereign" is used by Filmer, and he means it of course in the broad sense in which it was introduced by Bodin and by Hobbes. Now it is of the essence of sovereignty not to be limited or limitable, but here it is said to be limited. What could he possibly mean? What is the status of the descent, or rather the succession, in Hobbes's doctrine of sovereignty? You have an absolute monarch. How is the descent decided? How do you decide as to the descent from the monarch? Where does the right of appointing the successor lie?

Student: With the monarch himself.

LS: Surely. If there were a fundamental law of the realm which determined such questions, that is in itself incompatible with sovereignty. So from Locke's point of view, the law [governing inheritance of rule][xxi] proves to derive its validity from the silence of the present sovereign. If the present sovereign wants to have his daughter to succeed him rather than his son, it is of course refused. Now what Locke indicates here is this: that whatever Filmer may have said about the omnipotence or quasi-omnipotence of his king, he doesn't know what sovereignty really means. That would of course be incompatible with such a principle as primogeniture or what have you. So this chapter is not unimportant.

On this same page,[16] toward the end of the paragraph, the bottom of the page, there is this remark: "God or nature has not anywhere, that I know, placed such jurisdiction in the first-born, nor can reason find any such natural superiority amongst brethren. The law of Moses gave a double portion of the goods and possessions to the eldest, but we find not anywhere that naturally, or by "God's institution," superiority or dominion belonged to him."[xxii] These are strange expressions. What is the status of the law of Moses?

Student: It is not defined.

LS: Yes, that is hard to say. It is very ambiguously stated. He could naturally say [that] God has not placed any jurisdiction, such jurisdiction, in the firstborn. But divine institution has

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[xvii] *First Treatise*, sec. 111.
[xviii] The transcriber notes that there is a break in the tape of approximately 20 seconds at this point.
[xix] *First Treatise*, sec. 111.
[xx] *First Treatise*, sec. 111.
[xxi] In the original transcript: "indistinct."
[xxii] *First Treatise*, sec. 111.

given a double portion of goods to the firstborn. But I admit the ambiguity, and perhaps that was exactly what Locke wanted to do. Someone can draw from this the conclusion that the law of Moses is merely positive law, but the context does not exclude the possibility that the law of Moses means the same as God's institution. In this context I would like to refer to an earlier passage on page 75, the top of the page: "the law of nature, which is the law of reason." Now here he clearly distinguishes between nature and reason. You see: "nature has not . . . placed such jurisdiction . . . nor can reason find any such natural superiority amongst brethren." Reason and nature are two different things which happen to agree in this point, but they are different. On page 75 he says, "the law of nature, which is the law of reason," and there he identifies reason and nature. In his *Reasonableness of Christianit*y I found this very revealing expression: "the law of reason or, as it is called, the law of nature," which means the proper expression would be "the law of reason," but it is called the law of nature.[xxiii] That is the necessary consequence, it seems to me, from Locke's as well as from Hobbes's principles.

Student: Hooker also says that quite explicitly. He uses the term "the law of reason" and says that that is the proper term for what people call the law of nature.

LS: You may be right. But still, in Hooker I'm sure the context and the meaning of these passages . . . I think you are right. But still, in Locke it is fundamentally different, because for Locke, in strict language, the law of nature would be a law which men can't transgress, and the law of reason is a human project—which doesn't mean that it is arbitrary—which men can necessarily transgress. Laws of digestion would be laws of nature proper, whereas the provision against theft and similar things would be only a law of reason—a mere postulate, if a necessary postulate.

In paragraph 113, of course his story of Esau and Jacob implies—and that is of course not mentioned or not emphasized by Locke—that Isaac had no objection to one of his sons being the ruler of his brothers. That is proven by the blessing. So to that extent the rule of a brother over brothers does have biblical authority. But that we don't have to . . .

Student: It is rather interesting that he argues later that because Jacob didn't in fact exercise this over Esau—there is no indication that he ever exercised it—that Esau had his own army, his own men, and Jacob had his. And in fact, Jacob was in great fear for a while of Esau . . .

LS: We will come to that passage; that is a crucial point, I think. Let us read on page 84, top.

Reader:
Accordingly we read (Gen. xxv. 5, 6) that "Abraham gave all that he had unto Isaac, but unto the sons of the concubines which Abraham had, Abraham gave gifts, and sent them away from Isaac his son, while he yet lived." That is, Abraham having given portions to all his other sons, and sent them away, that which he had reserved, being the greatest part of his substance, Isaac as heir possessed after his death—[xxiv]

LS: Let us leave it at that. Now if you compare the biblical verse as quoted by Locke with the interpretation, we see interesting differences. "Abraham gave all that he had unto Isaac." Locke says he gave Isaac the "greatest part of his substance." And "Abraham gave gifts,"

[xxiii] John Locke, *Works*, 6:11: "for that this law was the law of reason, or as it is called, of nature; we shall see by and by."
[xxiv] *First Treatise*, sec. 114.

while Abraham in Locke's version gave them portions. "Gifts" means merely a free action; "portions" could very well mean what he is obliged to give. So Locke is giving here an example of how his teaching, his natural law teaching regarding inheritance, differs, if not from biblical law, at least from biblical practice. And this whole story of Ishmael is, I think, very illustrative, and one should go into it much more than we can now.

In paragraph 116 Locke seems to argue that if Filmer were right, Esau would be the ruler of Jacob—in other words, absolutely contrary to the whole thesis, as it is presented in the Bible. But we come now to a much more important passage that is characteristic, really[17], which we should read.

Reader:
And hence not being able to make out any prince's title to government, as heir to Adam, which, therefore, is of no use and had been better let alone, he is fain to resolve all into present possession, and makes civil obedience as due to an usurper as to a lawful king, and thereby the usurper's title as good. His words are—and they deserved to be remembered: "If an usurper dispossess the true heir, the subjects' obedience to the fatherly power must go along and wait upon God's providence" (*O*. p. 253). But I shall leave his title of usurpers to be examined in its due place, and desire my sober reader to consider what thanks princes owe such politics as this which can suppose paternal power—*i.e.*, a right to government—in the hands of a Cade or a Cromwell; and so all obedience being due to paternal power, the obedience of subjects will be due to them by the same right, and upon as good grounds, as it is to lawful princes; and yet this, as dangerous a doctrine as it is, must necessarily follow from making all political power to be nothing else but Adam's paternal power by right and divine institution, descending from him without being able to show to whom it descended or who is heir to it.[xxv]

LS: Let us start from this, the sentence in the middle of that paragraph. "But I shall leave this title of usurpers to be examined in its due place." Does this remind you of an earlier remark? In other words, he will not examine Filmer's title of usurpers here. Do you remember?

Student: Well, in the preface . . .

LS: Exactly. Let us look at the preface. What did he say in the preface, precisely?

Student: "If he think it not worth while to examine his works all through, let him make an experiment in that part where he treats of usurpation, and let him try whether he can, with all his skill—"

LS: Of course, that is the root of the whole context of the preface. A part of the book may have been destroyed or withheld; he doesn't tell you what happened, but certainly it is not published. This part dealt, among other things perhaps, with usurpation. And here we have another reference to that subject of usurpation which is not mentioned here.

Student: Also in section 80: "This is so strange a doctrine that the surprise of it hath made me pass by, without their due reflection, the contradictions he runs into." Note this in connection with section 79.

[xxv] *First Treatise*, sec. 121.

LS: That is correct.

Student: Although he does say at the bottom of the page, "I shall a little more particularly consider how 'inheritance,' 'grant,' 'usurpation,' or 'election'—"

LS: Yes, that of course would not formally contradict the Preface, would it?

Student: No. When he says, "I shall a little more particularly consider," that doesn't mean . . .

LS: Yes, but at any rate, in paragraph 79 he does discuss usurpation and gives three examples. That would be worth your study. We cannot go into that. I would like to draw your attention to another passage, because that is more possible to discuss here. On page 17, center, paragraph 16, Filmer had spoken of God's appointment. Locke says:

"I wish he had told us here what he meant by God's appointment. For whatsoever Providence orders, or the law of nature directs, or positive revelation declares, may be said to be by God's appointment; but I suppose it cannot be meant here in the first sense—that is, by Providence; because that would be to say no more but that, "as soon as Adam was created," he was *de facto* monarch."[xxvi]

Now[18] here we have the question of the usurper. What is a usurper? He is a monarch, but not *de jure*. He is only a *de facto* monarch. But now we see how this fits together. Filmer himself said that a usurper, a mere *de facto* monarch, has his power through God's providence. Unless I misunderstand the meaning of "wait upon,"[19] [it] means, I suppose, to defer to. Doesn't it? That is the way in which I understood it. "If an usurper dispossess the true heir, the subjects' obedience must go along and wait upon God's providence." Or could it mean wait until God restores it? What is the proper interpretation?

Student: Well, in the traditional Christian teaching, obedience would be due even to unjust kings insofar as all authority comes through God, and while specific acts might be ruled out . . .

LS: But let us first begin with the purely philological question, the meaning of "to wait upon." What does "to wait upon God's providence" mean? What does Filmer mean by that?

Student: [. . .]

LS: Yes, but could it have the meaning: "and we must wait until God deprives this crook?" But at any rate, I believe that the remark in paragraph 16, where he says divine providence shows itself in who rules *de facto* regardless of whether he rules *de jure* or not. This is at least what is suggested to me. What would be the implication of this? Let us look at page 96, bottom, where Locke also says, in interpreting Filmer: "The governments of the world are as they should be." The coincidence of the Is and the Ought: Is this the meaning of providence? If God rules the world, must the world not be fundamentally in order? I believe that this is what Locke has in mind. Well, if one would develop that, one would come down to this argument, which I know from other thinkers of the same description: either God is the cause of everything—he is omnipotent, strictly speaking,[20] [in which case] he must be the cause of

[xxvi] *First Treatise*, sec. 16.

evil too, or else God must be . . . In other words, the omnipotence is incompatible with the goodness. Or if you want to maintain God's goodness, you must admit an independent cause of evil, call it matter, call it an evil prince, or as you want it. I believe Locke's argument has something to do with this kind of reasoning. That is certainly strange. This passage in paragraph 16, which was wholly unintelligible to me, i.e., the *de facto* monarch, becomes intelligible, I believe, if it is linked up with this passage. Do you understand that, i.e., how this argument would run? Of course there is a great implication. According to the orthodox teaching, the cause of an evil is the misuse of freedom by created beings, be it angels or men. The implication of course is that this is inadequate as an explanation of evil. That is somehow presupposed. And we have seen a number of instances where Locke indicates that he does not accept the doctrine of the Fall. That would be part of that story. I cannot go beyond that now, or does anyone . . . I'm sorry, I have not even looked up the passage in Filmer's observations on[21] [Hunton], which he quotes here.[xxvii] Locke does not always quote quite literally, by the way, so that it is necessary to look it up.

Student: Would you say then that Locke's implication here is that God really has no care of the world? In other words, that while he may have it, the causes are completely contained within the world itself and thus we are free to do whatever we want to. In other words, the complete destruction of providence.

LS: In an earlier version, this thought occurs in Averroes in this form: God is not the efficient cause of the earth, but only the final cause. That preserves the perfect goodness of God because it allows an independent principle explaining corruption, evil, and so on in man. But that of course would not be suitable in Locke's metaphysical background.[xxviii] But still, the fundamental problem is the same: the relationship between omnipotence and goodness. That is the problem: Are omnipotence and goodness compatible? Does not omnipotence necessarily mean that God is the cause of evil? That means of course, more specifically: Is the traditional theological distinction between God's permission and God's causation tenable? That is a long story, but that is somehow implied in this.

I see here a note referring to a footnote on page 89.[xxix] I don't want to go into it, but that is a very strange note, because "Locke, while denying that positive law provides an appropriate answer to the question he raises . . . "[xxx] I do not know what this note means, because Locke knew that, of course—Locke said that Filmer has no right to refer to positive human law, and knows of course that only positive human law could settle that. I do not know what that means, but it is not important.

This paragraph 131, to which Father Buckley referred, is important also for another reason. Does Locke really say that war and peace is limited to political society? No, he denies that. But that is very crucial. Why is it crucial? War and peace, and not only factual war and peace, but . . . [xxxi]

[xxvii] Strauss's reference is to Filmer's book *The Anarchy of a Limited or Mixed Monarchy*, a consideration of Phillip Hunton's *Treatise on Monarchy* (London, 1648). This text is available in *Sir Robert Filmer: Patriarcha and Other Writings*, edited by Johann P. Sommerville (Cambridge: Cambridge University Press, 1991), 131-71.

[xxviii] In the transcript: "metaphysical background (?)"

[xxix] That is, to page 89n7, on sec. 123.

[xxx] Cook speaks of "questions" in his footnote, not merely of one "question."

[xxxi] There is a break in the tape at this point.

Now a few more points. In paragraph 135[22] I find also a strange remark. When he speaks of Abraham and Lot: "they parted by consent (Gen. xiii), hence he ["he" being Lot—LS] is called[23] both by Abraham and by the text Abraham's brother."[24] What does he mean by a distinction between Abraham and the text? What does such a distinction generally mean, if we take a profane author? Well, say . . .

Student: Here in this case Lot is strictly speaking Abraham's nephew by the blood relationship . . .

LS: That Locke says.

Student: . . . so I think what it means here is that not only Abraham called it when he is directly speaking, but when speaking in the text itself, the author of Genesis in places refers to Lot as Abraham's brother.

LS: But in this case I looked up the passage, and only Abraham mentions or calls Lot a brother. The author of Genesis xiii, as distinguished from Abraham, doesn't mention him at all. So what does he mean, then? What does this distinction between Abraham and the text mean in a case where it is not applicable? Because the text, as distinguished from Abraham, doesn't call Lot a brother. I looked up all the passages in reference to Lot, and there is nowhere a reference by the text, as distinguished from Abraham, to Lot as a brother. So in this case I am pretty sure that there is a difficulty. Now if you look up Genesis xiii in this context, where this is mentioned (Gen. xiii, verse 7), where Abraham says "for we be brethren," in the preceding verse I read: "And there was strife between the herdman of Abram's cattle and the herdmen of Lot's cattle: and the Canaanite and the Perizzite dwelled then in the land."[xxxii]

One has to have a bit of knowledge of Old Testament criticism. Now this passage, "and the Canaanite . . . in the land," was one of the key passages in which it was proved that Moses could not be the author of the Pentateuch. You see: "*then*." In Moses's time, of course, the Canaanite was in the land. But if he says "the Canaanite was *then* in the land," it means at the present he is not in the land. But in Moses's time he was in the land. That is one of the key passages. It is a reference which is confirmed by something else in the sequel. Don't believe that this is an out of the way thing. The three famous authors of the seventeenth century . . . decades prior to Locke, had tried to establish that Moses cannot be the author of the Pentateuch. And that had an enormous implication,[xxxiii] because in the traditional view,[25] at least the popular understanding of the traditional view, [the divine origin of the Pentateuch] and the Mosaic origin were identical, and therefore an attack on the one was thought to be fatal to the other. Therefore that is not a negligible little thing here. And you see in the next paragraph, which proves, I think, that I am on the right track: "this discovery it seems was reserved for our author to make two or three thousand years after." Now let us do some arithmetic. That was written, say, to simplify matters, in 1700. What is two thousand years prior to 1700? 300 B.C. Now that is certainly not the date in which the Pentateuch is supposed to be written—at least the hypothesis which was very common in the seventeenth century among such people said Ezra was the true author of the Pentateuch. It was very late, that is the inference. I mention the point only for this [reason]: that this biblical criticism, in

[xxxii] Gen. 13:7 (AV). This sentence should read: "And there was *a* strife between the *herdmen* of Abram's cattle and the herdmen of Lot's cattle: and the Canaanite and the Perizzite dwelled then in the land" (emphasis added).

[xxxiii] The three famous authors in question are Thomas Hobbes, Benedict Spinoza, and Uriel da Costa.

its very sweeping way as it exists in the seventeenth century, was known to Locke, of course. He had read *Leviathan*. That suffices for being aware of that. And Locke adopted it; otherwise, he could never have said "two or three thousand years after." So therefore the Bible was not an authoritative text.

There are a few more points we should mention. I regard this possibility I mentioned as certain and have not the slightest doubt of it, but I am very dissatisfied because there are so many steps which I do not understand. For example, where Locke is so repetitious. He doesn't say anything new for two pages, and yet he must have something up his sleeve. But there I am completely unable to discover it. It would require a work of a few years, I think, to really bring to light the implications of this treatise. This passage to which Father Buckley referred in paragraph 141 (page 101, bottom). You see, if you take the individual points, like: Is this verse in Genesis of crucial importance? Well, you can say: Well, that is antiquarian. But these arguments referring to the very specific biblical passages were of crucial importance in this discussion as regards the authority of the Bible or not. That is no longer today equally important because the religious positions have made themselves in various ways free from a strict principle of verbal inspiration, but in this stage these arguments were of crucial importance. The usual way to meet these difficulties was of course this: to say that Moses, inspired by God, *wrote* the text . . . There is no absolute impossibility that God dictated [to] Moses the account of Moses's own burial at the end of Deuteronomy. But today this kind of theological explanation is usually regarded as childlike; they arouse a smile. But that was the only way in which the difficulty could be taken up by traditional theology. We must not minimize the importance of that. Whatever people may do today in so-called history of civilization is of course saved from this, the presumption being that the authority of the Bible as it was understood traditionally has been disposed of by biblical criticism. Now this premise, into the merits of which I will not go, is of course already established for a man like Locke. One should not deceive oneself about it. Because the later refinements which were made in the eighteenth and nineteenth centuries or twentieth century[26] no longer concern the Pentateuch. Once you admit that the Pentateuch was not written by Moses, then whether you say this particular chapter was not written by Josiah and so on doesn't raise any interesting fundamental questions anymore. So that was really the issue.

Now connected with it is a remark on the top of page 101. Filmer had said: "Most of the civilest nations of the earth labour to fetch their original from some of the sons or nephews of Noah." Locke says:

"I fear the Chinese, a very great and civil people . . . trouble not themselves much about this matter. All that believe the Bible—which I believe are our author's 'most of the civilest nations'—must necessarily derive themselves from Noah; but for the rest of the world, they think little of his sons or nephews."[xxxiv]

In order to appreciate the significance of this passage, one has to look up what Locke says about the Chinese elsewhere, e.g., the *Essay Concerning Human Understanding*.[xxxv] Locke, following quite a few travelers at that time, says the Chinese, at least the intellectuals among

[xxxiv] *First Treatise*, sec. 141.

[xxxv] *Essay* 1.4.8. "But for this, let them consult the King of France's late envoy thither, who gives no better account of the Chinese themselves. And if we will not believe La Loubere, the missionaries of China, even the Jesuits themselves, the great encomiasts of the Chinese, do all, to a man, agree, and will convince us, that the sect of the literati, or learned, keeping to the old religion of China, and the ruling party there, are all of them Atheists."

Chinese, are atheists. They do not have an idea or knowledge of God. Now[27] if we put these two passages together, [Locke says] people can be very great and civil without having an idea or knowledge of God. I don't have to point out the gravity of this passage. I only try to link it up with Locke's doctrine of natural law. "A very great and civil people": a people cannot be very great and civil if it does not comply with the natural law. But if a people can be civil,[28] can comply with the natural law and at the same time be atheistic, the natural law cannot have a theological basis. And therefore, this other argument starting from property and government, to which I referred on a former occasion, that is the real argument of Locke, underlying Locke's natural law. Yet today these things have become trivial. When people speak of the great cultures and civilizations today, that is all settled and no longer a matter for discussion. The claim raised by the Bible is long forgotten, at least in this secular tradition. But Locke was one of the great founders of that tradition, and we must not overlook that. And that is not an accidental little thing; it is crucial for the whole doctrine of natural law.

In this same paragraph, toward the end, to which Father Buckley also referred, you see he quotes a few, still in answer to Filmer's argument: "But if it were Ogyges, Hercules, Brama, Tamerlain, Pharamond, nay, if Jupiter and Saturn were the names from whence divers races of men, both ancient and modern, have laboured to derive their original, will that prove that those men 'enjoyed the lordship of Adam by right descending to them'?"[xxxvi]

Now that is linked up with the previous point. Do you see that? Let us state it precisely. Filmer says the reverence in which the sons of Noah were held is proof of this and this. To which Locke answers: The reverence in which men are held doesn't prove anything. And he gives here several examples. If we follow the simple rule and look at the fellow in the center, we find Tamerlane. You know who Tamerlane was? A very cruel conqueror. That men admire [him] that doesn't mean anything about his deserving to be admired. That is the point. The mere fact of admiration doesn't prove anything.

Father Buckley also referred to Locke's version of the Tower of Babel on page 105 (paragraph 146), where there is not the slightest reference to not only the implication but [to] the gist of the biblical story—that this was an act of pride and therefore the dispersal was punishment. They were obviously very sensible people. "They built it [the tower—LS] for themselves as free men,[29] not as slaves for their lord and master."[xxxvii] You see the ambiguity of that. Their lord and master is not merely the earthly king to whom they were not subject. The very act of rebellion against God shows they were free men. He continues: "'that we be not scattered abroad,' having a city once built and fixed habitations to settle our abodes and families."[xxxviii]

There is something else. Let us look on the next page[30] and read from the beginning of the page.

Reader:
Would it not be an argument just like this, for monarchical government. to say, when any monarchy was shattered to pieces and divided amongst revolted subjects, that God was careful to preserve monarchical power by rending a settled empire into a multitude of little governments? If anyone will say that what happens in providence to be preserved, God is

[xxxvi] *First Treatise*, sec. 141.
[xxxvii] *First Treatise*, sec. 146.
[xxxviii] *First Treatise*, sec. 146.

careful to preserve as a thing therefore to be esteemed by man as necessary or useful—it is a peculiar property of speech, which everyone will not think fit to imitate.[xxxix]

LS: You see that refers again to the problem of providence: "that what happens in providence to be preserved" is good. Whatever happens—how was it put?—whatever is, is good. That is according to Locke the meaning of the doctrine of providence. Now if that is so, the distinction between right and wrong is impossible. And that is somehow, in a way in which I have not been able to work out, but I believe one would find if one could understand it thoroughly—this is what Locke is driving at. From the biblical premise of the creation of the world by an omnipotent God, this consequence necessarily follows. That, I believe, is what he has in mind. I am not able to elaborate that.

Only a few more passages. On page 109,[31] where he says: "I challenge any man to make any pretence to power by right of fatherhood either intelligible or possible in any one otherwise than either as Adam's heir or as progenitor over his own descendants naturally sprung from him."[xl]

That is a remarkable statement, because he admits that within certain limits Filmer is rational. I mean, starting from the principle that power derives from right of fatherhood, there are two ways only, Locke says—he uses very strong language, i.e., "I challenge any man." The consequence from this is either the non-Filmerian version, i.e., that every father is the ruler of his own descendants, and that means of course the abolition of political government, since there can be only rule of fathers, heads of families, and so on; but if there is to be political government, then it can only be in the form of Adam's heirs. That is what Locke asserts. That is very remarkable. Filmer's assertion is a reasonable conclusion from the false premise that all power is derived from the right of fatherhood. What is here implied?

Student: That the father of the family would be a king.

LS: Yes, but that is not incompatible with political society. But why could there not be many kings? Why could there not be many kings, all heirs to Adam? I had an answer, but I see now that it is better than I thought. Under one condition: that the division of the human race into nations is unnatural. Then there can only be one ruler, that is, a political ruler, as distinguished from the ruler of a mere family. And who said that, that the division of the human race into nations is unnatural? Who said that?

Student: Rousseau.

LS: No, no. That I saw only at this moment. The Bible. The Tower of Babel. The division into these seventy-odd nations is a punishment. And that confirms my suspicion that what Locke is driving at is this: that while Filmer was a very great fool, his ultimate presuppositions were the biblical presuppositions, and it is these biblical presuppositions the criticism of which is really important to Locke. Filmer represented only a very limited and negligible point.

I think in paragraph 150, where he discusses the situation of the children of Israel in Egypt, Filmer had said: in Egypt "the exercise of the supreme patriarchal government was

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[xxxix] *First Treatise*, sec. 147.
[xl] *First Treatise*, sec. 149.

intermitted because they were in subjection to a stronger prince." Here Locke raises this question: What about [the] pharaoh? He ruled; there was a king. So what entitles Filmer to say that the patriarchal power was intermitted while the children of Israel were in Egypt? The tacit premise is that the real monarchy is only the Jewish monarchy or its successor, the church. That is, I think, also another part of the argument by which Locke links up Filmer's allegedly broad political doctrine to a very strict biblical doctrine.

Let me see. There is some reference to that. I read to you a few passages from page 110: "The exercise of patriarchal jurisdiction, if patriarchal be regal, was not intermitted whilst the Israelites were in Egypt."[xli] Because the pharaoh ruled. Later on, Filmer implies that "the exercise of patriarchal jurisdiction were intermitted in the world whenever the heirs of Jacob had not supreme power."[xlii] Therefore the doctrine which Filmer gropingly and blindly asserts really means a universal monarchy of the elected people or their successors, the church. You see also this remark toward the end of the paragraph: "But one cannot easily discover in all places what his discourse tends to."[xliii] That toward which Filmer's discourse tends is something different from what he explicitly teaches. The explicit teaching is simply the establishment of absolute monarchy all over the world. But without his teaching, by virtue of the half-biblical basis of that, he is driven to accept the whole biblical doctrine with its implications, the implication being one government of all men under God. That is the real, true, and just government. We can say a temporal and spiritual government of all men, and that is really the subject with which Filmer is concerned.

Student: I was wondering how strong[ly] Dante's views were related to this. I was wondering why Locke should be so concerned about this if the question of a universal monarchy was really not so strong.

LS: A universal monarchy in the sense of a universal temporal monarchy was of course not practically sound. But what about the claim of the church, the Catholic Church? Universal, isn't it? Now if that is so, and if the argument of the locus of sovereignty is admitted, if you have two powers, two independent powers, and the power which in borderline cases can decide is the sovereign, then it follows necessarily that the Catholic Church claims universal sovereignty . . . But here again I refer to Hobbes's argument, stated clearly toward the end of *Leviathan*, that Presbyterianism raises the same issue which the Catholic Church had raised, namely, the dualism of power.[xliv] If you had the simple solution which the Lutherans and Anglicans had, by identifying the head of the church with the head of the state, the problem would be at least concealed. But both from the Catholic and Presbyterian points of view, where you had an ecclesiastical power independent of the political power, the problem is

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[xli] *First Treatise*, sec. 152.
[xlii] *First Treatise*, sec. 152.
[xliii] *First Treatise*, sec. 152.
[xliv] *Leviathan*, chap. 47. "But in those places where the Presbytery took that Office, though many other Doctrines of the Church of Rome were forbidden to be taught; yet this Doctrine, that the Kingdome of Christ is already come, and that it began at the Resurrection of our Saviour, was still retained. But *cui bono?* What Profit did they expect from it? The same which the Popes expected: to have a Soveraign Power over the People. For what is it for men to excommunicate their lawful King, but to keep him from all places of Gods publique Service in his own Kingdom? and with force to resist him, when he with force endeavoreth to correct them? Or what is it, without Authority from the Civill Soveraign, to excommunicate any person, but to take from him his Lawfull Liberty, that is, to usurpe an unlawfull Power over their Brethren? The Authors therefore of this Darknesse in Religion, are the Romane, and the Presbyterian Clergy."

obvious. And therefore Hobbes says, in a way, Presbyterianism is a greater danger—I have forgotten now what he said precisely— [it] is a greater danger to peace than is Catholicism. So the problem was there. In the narrowly political sense,[32] [Locke][xlv] has written only a pamphlet for the year 1690, where this problem would not have arisen. But he is of course after bigger game: he wants to lay the foundation for a rational political doctrine which should give an entirely new direction to human affairs. And therefore he was compelled to raise the fundamental question, even if the fundamental questions in a certain form were no longer ordinarily raised. They were dormant.

Student: Of course he had commented after James's . . .

LS: So in other words, the problem of Catholicism was by no means completely alien to this period. But I think to that extent it gave him a possibility of appeal to the prejudice and this kind of thing. That is true. But the issue, I think, is deeper. As for Dante, of course you must not forget the end of the *Divine Comedy*; you must not forget that the greatest imitation[xlvi] of the *Divine Comedy* was made in Locke's lifetime: *Paradise Lost*. So in a way Dante was present, but I have no reason to assume Locke had read Dante. I am not aware of that.

To repeat, then, the universal secular monarchy was not the question, but the universal spiritual monarchy, which, however, under the premise of the doctrine of sovereignty, means it is at the same time temporal. I mean, if you take that together, then the issue is clear.

There is one other passage which is mentioned when he speaks (on page 113, paragraph 158) of the judges: "these judges, who were all the governors they then had, were only men of valour whom they made their generals to defend them in time of peril; and cannot God raise up such men, unless fatherhood have a title to government?"[xlvii] Which on the face of it would mean God raises up such men: he being the cause of all natural things, through his creative work, such men appear. But that they got their legal power they owe to their election by the people.

Student: He does that again in paragraph 167: that Filmer will "by no means allow they were chosen by the people."

LS: Yes. In this respect Filmer is much closer to the biblical text than Locke. Of course, Locke's argument is complex. A part of it is of course simply an attempt to give the biblical passages a twist in the direction of his teaching, which was doubtless done by many theologians . . . I refer you only to the single reference to these two thousand or three thousand years, referring to the story of Abraham, and the simple chronological and arithmetical calculation which shows he did not believe in the Mosaic authorship of the Pentateuch. And that, in the case of the seventeenth century, meant a rejection of the authority of the Pentateuch. And today, for the liberal theologians it is completely settled. In Catholicism it is a bit more complicated, because the verbal inspiration is not in that sense required as it was required by Protestantism and as it was also admitted in the Jewish tradition.

[xlv] Though Hobbes would appear to be the author referred to here, his death in 1679 would suggest that Strauss is referring to Locke.
[xlvi] The word "imitation" is uncertain here.
[xlvii] *First Treatise*, sec. 158.

Now I made a number of apologetic remarks with a view to the theological problems and problems of biblical exegesis which came up, because I don't know whether I did not insult some of you by these apologetic remarks but I had to consider the prejudices ruling in our time. But I would state it again. If we have to understand Locke, or if we have to talk of Locke and are self-respecting people, we must study him. And then we must go into his arguments, even into those parts of his arguments which today are despised by the majority of our profession. Is this understood? I see no other way. One can say, as some people say, as this advanced majority says: These are old fogies, more or less, and why should we read them? That is another matter, and I think one can also argue that out, if this were the proper time for it. But once it is admitted that a self-respecting social scientist should know something about what Locke meant and wanted, then one must even go into these passages and must even look up the Bible. And I think one could even refer to a greater authority of these gentlemen, namely, Max Weber, who took the trouble to learn Hebrew because he felt certain very important questions of sociology could not be solved on the basis of the translations but had to be done on the basis of the originals.[xlviii] So I think we have a very good case for our procedure.

But to come back to the broad problem, I can only refer to what I said at the beginning. His two fundamentally different notions of natural law, the premodern and the modern; and this premodern notion of natural law, while not being identical with the biblical teaching, is certainly akin somehow to the biblical teaching. And therefore, what? The mere philosophic natural law teaching did not have the authority which the biblical teaching had. Think of those many Protestants who looked askance at anything brought over through scholastic teaching. The authority of Bible as Bible was always greater; therefore the new natural law teaching, being radically opposed to the biblical teaching, had to face it some way. That is what Locke has done in a very obscure way in the *First Treatise*. If one would understand the *First Treatise* thoroughly, as I believe no one I know of understands it, then one would see Locke's specific argument against the biblical teaching. It comes to the fore for a moment, as it were; for example, in this reference to providence to which I referred.

Now is there any point which you would like to raise? Because from now on there will not be very many references to biblical passages. But don't forget that the silence about the Bible is[33] as important . . . We have here a political treatise in which, if my memory does not deceive me, *the* classical passages regarding government and authority from the New Testament, e.g., "Give Caesar what is Caesar's" and "Be subject to the higher powers," are never quoted. The key passage from the Bible which Locke quotes is a passage from the Jephthah story.[xlix] Do you remember it now? An appeal to heaven. How is it worded? Well, in case of conflict, in a certain political division,[l] nothing remains but appeal to heaven . . .

Student: The lord judge between us.

LS: That is the key passage. And that is taken from a passage on international revolution, and Locke makes it the key passage for domestic revolution. But the two crucial passages, "Give to Caesar what is Caesar's" and "Be subject to the higher powers," are never referred to. That the former could not suit Locke appears from the most important practical teaching of the seventeenth century, i.e., no taxation without representation. Of this Locke says it is one of

[xlviii] See Marianne Weber, *Max Weber: A Biography*, trans. Harry Zohn (New York: John Wiley and Sons, 1975), 57.
[xlix] Judges 11:27. See *First Treatise*, sec. 163; *Second Treatise*, secs. 21, 176, 241.
[l] In the transcript: division (situation?)"

the most important principles of natural law. And he also says, in his *Reasonableness of Christianity,* the whole natural law is presented in the New Testament in perfect clarity.[li] One should therefore find in the New Testament a statement, "No taxation without representation," but we find exactly the opposite. In other words, it is not merely the quotations of the Bible but also the silence on biblical passages which could reasonably be expected in the context which have to be considered. Since knowledge of the Bible is today extremely thin, there is a simple help, and that is: Locke quotes Hooker. And it is extremely wise, even necessary, to look up the quotations in Hooker's context, and there you will find all kinds of observations which Locke omits. And then you will see the real extraordinariness of Locke's teaching . . . That was generally his act. By quoting Hooker he creates a perfect propriety, but then he does not quote Hooker when he agrees with Hobbes's [position].[lii] And much of the so-called history of ideas is of course just a victim of Locke's cleverness, or however you call it.

Student: In making the distinction between the two types of natural law teaching, you mentioned that the modern form is based on a demonstration.

LS: I used the term.

Student: But there are cases in which Locke speaks of self-evident truths, things which do not need to be demonstrated.

LS: Very well. But what are these self-evident truths?

Student: You mean that they are based on reason, human reason, or . . .

LS: The point is this. If I take the Lockean example, "where there is no property there is no injustice," that is from Locke's point of view self-evident—an analytical proposition, as someone said today. If you analyze injustice, you see injustice means to interfere with what belongs to another man, his possessions, his body, or whatever it may be. And therefore, without property there is no injustice. That's it. That doesn't tell you a word about why [there] should[34] be property or why[35] injustice [is] bad. For this purpose we have to go back to the fundamental principle of self-preservation. But this principle of self-preservation is not in itself, or simply, a moral principle. The moral principles rather follow from this fundamental inclination or desire of man, namely, if you reflect that in order to preserve yourself you need peace or society, therefore the question arises: How must your attitude be so that it is conducive to peace and society? This is the place of morality, according to Hobbes and Locke. But you see, morality is somehow deduced from something which in itself is nonmoral. That is the concrete meaning of the statement that it is demonstrated. Morality is deduced from something which is in itself amoral—which does not mean it is *im*moral. That is the meaning of that; whereas if you speak of the conscience giving you principles, then you imply there are self-evident moral principles. I repeat again the statement of[36] Hobbes: the laws of nature, that is to say the moral laws, are "but conclusions."[liii] They don't have principles of their own.

[li] See *Natural Right and History*, 205n for references.

[lii] The transcript has ellipses here.

[liii] *Leviathan*, chap. 15, end. "These dictates of reason, men used to call by the name of laws, but improperly: for they are but conclusions, or theorems concerning what conduceth to the conservation and defence of themselves; whereas law, properly, is the word of him, that by right hath command over others."

Student: [. . .]

LS: Yes, sure. You presuppose here a theological basis of the whole teaching, and that is exactly the question. I mean, in the case of Hobbes, it is obvious that self-preservation is not traced ultimately to a creator and the will of a creator. It is just there. That is a question, i.e., whether Locke, who always uses theological language, much more than Hobbes does, whether that is really meant seriously by Locke. On the basis of our discussion of the *Essays on the Law of Nature*, as well as some other passages which we will see[37] [presently] in the *Two Treatises*, I am extremely doubtful. Locke tried to present a natural law teaching which was not based on the acceptance of the existence of God. I know of course that at first glance the opposite is true—you will see that immediately when we begin to read the *Second Treatise*. But the question is whether this is not a kind of adaptation to the then prevalent view, which was necessary if he wanted to get any hearing. That is a long question.

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[1] Deleted “itself.”
[2] Moved “famous.”
[3] Deleted “who.”
[4] Deleted “possible.”
[5] Deleted “That.”
[6] Deleted “a.”
[7] Deleted “history.”
[8] Deleted “and.”
[9] Deleted “concern.”
[10] Deleted “means.”
[11] Deleted “it.”
[12] Deleted “Either this title of heir to Adam . . . or else”
[13] Deleted “(page 80, bottom).”
[14] Deleted “and says, i.e. Filmer.”
[15] Deleted “(top).”
[16] Deleted “(81).”
[17] Deleted “(paragraph 121).”
[18] Deleted “let us turn here.”
[19] Deleted “but wait upon.”
[20] Deleted “then.”
[21] Deleted “Locke.”
[22] Deleted “(page 97).”
[23] Moved “(he being Lot).”
[24] Deleted “Still.”
[25] Moved “the divine origin of the Pentateuch.”
[26] Deleted “do not.”
[27] Moved “Locke says.”
[28] Deleted “they.”
[29] Deleted “[page 105, center of paragraph].”
[30] Deleted “(page 106).”
[31] Deleted “(top).”
[32] Deleted “he.”
[33] Deleted “as much”
[34] Moved “there.”
[35] Moved “is.”
[36] Deleted “Locke.”
[37] Deleted “partly.”

On Locke's *Second Treatise*: chapters 1-4
Session 9: February 17, 1958

Leo Strauss: [In progress] In other cases your paper seemed to be somewhat vague and speculative.[i] Now let me see. Did you not say at the beginning of your paper that political power is in Locke as large as in Filmer?

Student: Yes, this is based perhaps on my own category. The power being as full as the right to inflict death allows it to be, yet the right to use it, there being a limit that will later be imposed upon it, the right deriving from who allows it to be used.[ii]

LS: Is this not a somewhat strange measure, i.e., capital punishment? Is not from this point of view practically every government, up to a short time ago, as absolute as any other? I mean, you find capital punishment even in the mildest regime as well as in the most tyrannical one. You cannot take the existence or nonexistence of capital punishment as the yardstick of freedom, because there was a time when even the Soviet Union had abolished capital punishment. You know, that is a too-Hobbean point of view, to take killing as the only standard of judgment. That won't work.

We will take up the question of the quotation from Hooker later on in the proper context. But you made one point which I found very good, although you didn't follow it up. You said that in the state of nature according to Locke everyone has the right to enforce the law of nature, but he must do this conscientiously. And thus he must not, say, inflict death for a minor theft. That would be unfair. Locke means that it would be unfair. There is no proportion between the theft of a turnip, for example, and the life of a man. But then you raised the question: Who will enforce this moderation, this temperance, if there is no other enforcement[1] [but] human enforcement? Well, how does Locke argue from here on? First, we have the right of everyone to enforce the law of nature. This must be, because that is the only enforcement possible. That is the implication. And now we get into trouble again, because the law of nature must be justly enforced. Who will guarantee just enforcement? So we need another principle beyond the right to enforce the law of nature. That is really the argument of[2] Locke here. He must find another legal principle beyond those mentioned up to now. What is that? You said it in your paper more than once, but you didn't lay bare the precise connection. To repeat: We have first the right to enforce the law of nature. Then you will need an enforcement of the just enforcer of the right of nature, of the law of nature. What is that principle to which he appeals then?

Student: It appears to be conscience.

LS: Yes, but conscience leaves us with the same trouble. But there is another principle to which he refers in this second chapter, apart from the right to enforce the law of nature.

Student: The convenience . . .

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[i] Strauss responds to a student's paper, read at the beginning of the session. The reading was not recorded.

[ii] The transcriber notes: "This appears confused but represents the statement."

LS: No, no. He makes a clear distinction between two rights. The first is the right to enforce the law of nature, and the second?

Student: Well, if everyone is equal, perhaps . . .

LS: But here he speaks explicitly of two rights. The first regards the enforcing of the law of nature. And the second?

Student: Reason.

LS: That is implied in both.

Student: Reparations.

LS: The right to demand reparation. You see, the right to enforce the law of nature applies as well to the spectator of a wrong as to the sufferer of wrong. And therefore he brings in now the right to demand damages and indicates that it belongs entirely to the sufferer and not to the spectator. So self-interest comes in here. But still, will self-interest guarantee fair treatment of an enemy?

Student: If it is not beyond his power to . . .

LS: So in other words, it is absolutely necessary that the state of nature should become a state of war, because there is an intrinsic possibility of theft, not to speak of murder . . . But to follow the argument more precisely: Locke creates first the impression of a perfectly peaceful situation where an injustice is committed only extremely rarely, and then everyone, out of a sense of justice, without thinking of his own interest, does justice to the offended. But then we see that if there were no selfish motives, the demand for the reparation of damages, the whole thing wouldn't work. But in the moment this is indicated, it also becomes still clearer that you cannot expect here any fair, just treatment of offenders. And then it is a state of war.

Now let me see. You spoke of Locke's theology, which is as good a term as any other. And where does the alien come in in your version of Locke's theology?

Student: I may have overstressed that . . .

LS: Well, it is very dark, and I would be grateful for any help in that.

Student: The alien finds himself in a foreign land, and he is in ignorance of the laws of that land. Therefore, the binding force of knowledge is not on him. But secondly, since he is not one of that group of people, or possibly for additional reasons, he is not bound to follow the laws either. Because first they are not known to him and . . .

LS: But does Locke, for example, imply that he is ignorant of those laws?

Student: No, it doesn't necessarily say that.

LS: The question is: Why can a government punish an alien? And Locke's answer is: It cannot punish the alien on the basis of positive law, because there is no subjection of the alien to the government. This is a very arbitrary assumption he makes here. Hence the right to

punish the alien is based entirely on a natural law. That serves the purpose of establishing the view that there is a natural right to punish, that the right resides by nature in man. It is possible that there is more behind that, but I don't know. Perhaps we can take this up at a later stage.

Now let us turn to the beginning of the *Second Treatise.* In the first paragraph, as you see, Locke summarizes the result of the *First Treatise*, and we can state the argument perhaps as follows. The fundamental alternative is whether a distinction between right and might ought to be made or not. One alternative[3] [is] that right is identical with might. That is rejected by Locke, as it is rejected by Filmer, and we can say by most political thinkers. So the question is, then, how the distinction between right and might, between legitimate and illegitimate government, is to be made. And that is a point of controversy between Locke and Filmer. But this is already an assumption, that such a distinction between right and might must be made. What is the argument, which Locke implies somehow, against the thesis that government is simply the rule of the stronger, of the individual or group stronger than the others in the society? What is the argument against that, which Locke implies? In other words, he who has the power has it and exercises it, and there is no criterion by which the legitimacy or illegitimacy of that power can be judged. You cannot go behind the factual possession of power.

Student: It would lead to perpetual revolution.

LS: Yes, if the government is not strong enough. But if they are very tough, they can keep the people down for a very long time. But I think the thought which Locke implies is this: that government is meant to serve a function. Or more elementarily stated: there is *need* for government. Government is not something which just happens. But there is a need: man needs government. And this need is the standard. That of course does not suffice. But you have to go back to that. The need for government means immediately the question of the function of government, and therefore the possibility of a distinction between a government which in principle fulfills the function of a government and a government which does not fulfill the function of government. Something of this kind I think is presupposed. But it is more interesting, perhaps, to see that Locke suggests that the alternative to his teaching is Filmer's teaching. The whole work is built up in that way. Either you accept what Locke is going to say or you have to take this great folly of Filmer's. Either natural freedom and equality or natural subjection, i.e., fatherhood, as Filmer put it. Now this alternative was of course suggested by Filmer himself. You will recall that Filmer himself says that most people up to now, most political thinkers, had said that all men are by nature free and equal—even the royalists, even Aristotle is not completely sound on this point. So the issue is: Do you admit natural freedom and equality or do you deny it? Filmer denies it. And Locke says: All right, I am willing to accept that challenge and start on the basis of natural freedom and equality. So in Locke's presentation we see this: that a novel teaching like Filmer's, which favors slavery, opposes the common sense of mankind, which was always liberal. And of course Hooker and then the Scholastics . . . Aristotle occupies a somewhat ambiguous role in Filmer. For Filmer, Aristotle had some good points, e.g., the admitting of slavery as legitimate, but on the other hand he was not strong enough on fatherhood. By making a distinction between political government and domestic or family government, Aristotle gave the principle away.

But we must consider for one moment, in summarizing the things which we have discussed before, what is the precise relation between Locke and[4] this tradition to which he refers. Now

let us look at this graphically. [LS writes on the blackboard] Here we have Filmer. We regard him here as a complete outcast, because he is absolutely wrong. And then we come, say, to Hooker, to whom Locke refers—a respectable Anglican divine. And then we put Locke here. But of course Locke never speaks explicitly about the differences between himself and Hooker. And we can identify, for all practical purposes, Hooker with Thomas Aquinas—the differences are absolutely irrelevant in this context. What is the fundamental relation of Locke to Hooker and Thomas Aquinas, as far as it has appeared from the previous discussion of Locke's youthful essays and to some extent from the *First Treatise*? Of course we must keep this in mind. If we try to understand the *Second Treatise,* we must still read the *Second Treatise* by itself.

Student: He has abandoned the concept of natural law.

LS: Or to put it more cautiously or timidly, the Hooker–Thomistic concept of natural law has become obscure in Locke. That is safe to say. But what about Aristotle, whose teaching is not identical with that of Hooker and Thomas, to say nothing of Locke? Now that does not appear from the writings which we have been studying, but in his *Reasonableness of Christianity* Locke makes it quite clear how he stands [with respect] to the ancient philosophers in general, and by implication to Aristotle in particular. Now in the first place, he says of the ancient philosophers that they didn't speak much of God in their moral teaching. Their moral teaching was not a theological teaching in any sense. Secondly, and this is more important, the ancient philosophers regarded virtue as choiceworthy for its own sake. Or, as he puts it in his harsh language, they left virtue "unendowed," i.e., there is no premium for being virtuous,[iii] whereas in the theological teaching, according to Locke, there is such a premium in eternal life. The ancient philosophers did not do that, and we get here already an inkling as to what Locke will do. Locke will find an endowed version, and endowed on this earth, to supplement that, a characteristic which will distinguish it from that of Aristotle.

Now this much about the first paragraph. And now he thinks it is necessary immediately afterward to define political power, lest the confusion of political power and paternal power which Filmer has made be continued. Now let us look at this definition of political power.

"To this purpose, I think it may not be amiss to set down what I take to be political power; that the power of a magistrate over a subject may be distinguished from that of a father over his children, a master over his servants, a husband over his wife, and a lord over his slave."[iv]

Do you notice anything in this enumeration?

Student: These are all natural . . .

LS: No. But this distinction of the five powers I find already in Bodin. This I mention only in passing. This distinction is not characteristic of Locke. But does he not enumerate them in a strange way? Would not a father belong together with a husband? And why does he insert this master–servant relation? I would say it is more natural to say: a father over his children, a husband over his wife, a master over his servants, and a lord over his slave. This places "master over his servants" in the center of the enumeration, and I believe that is perhaps of

[iii] See *The Works of John Locke*, vol. 4, 150.
[iv] *Second Treatise*, sec. 2.

some help for getting at Locke's theology, as you call it. To put it briefly: to understand the relation of God to man not as the relation of a father over his children nor as that of a lord over his slave, but as a master over his servants. In other words, it is an extremely limited rule. We will see later on when he speaks of this difference. But this only in passing.

Now how then does he define political power in the sequel?

"Political power, then, I take to be a right of making laws with penalties of death and, consequently, all less penalties for the regulating and preserving of property, and of employing the force of the community in the execution of such laws, and in the defence of the commonwealth from foreign injury, and all this only for the public good."[v]

Now the emphasis is first, as you see—because the penalties, that goes without saying: once you have laws you must have penalties, and of course also the penalty of death as the highest penalty. But could it not be that political power is here defined primarily as the power or right of making laws—[vi] . . . political power is primarily the legislative power. That is characteristic of political power. When he speaks later on of the executive, you see he says: "of employing the force of the community in the execution of such laws." The executive power is strictly subordinate to the legislative power. And naturally, he has to add the other power which is not legislative nor[5] executive, strictly speaking, "the defense of the commonwealth from foreign injury," what he later on will call the federative power. We will come to that later. But still, what is the purpose of all legislation? Here we come to the characteristic Lockean assertion. With what is legislation concerned, all legislation, according to Locke? He says that. Making laws for what purpose?

Student: Regulating and preserving property.

LS: That is decisive. That is the characteristically Lockean definition of political power. Property has a wider and [a] narrower sense in Locke. It may mean only property as we ordinarily understand it; it may also mean life, liberty, and property. Nevertheless, the choice of the term "property" points to property proper, and not to life and liberty. I mean, that is usually not such a great problem, that life and bodily liberty should be preserved and regulated. The exciting and interesting problem concerns property narrowly understood. And we will see later on that this is exactly what Locke means. What alternatives could we think of, alternatives to the object of legislation? What about the welfare state? How is this related to Locke?

Student: Well, there are other things such as education, etc., which make up the subjects for . . .

LS: But let us first take for a minute the welfare state.

Student: It depends on how narrowly you would define property, in the wide or the narrow sense.

LS: Does the welfare state as such also regulate and preserve property? Some opponents of the welfare state say that it destroys property, but it certainly regulates property. And in its

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[v] *Second Treatise*, sec. 3.

[vi] There is a break in the tape at this point.

way it also preserves property. It preserves the property of the propertyless, to exaggerate a bit. So there is really no essential difference here[6] [from] the welfare state, but as Father Buckley pointed out, the alternative would be such things as education or, to use the Aristotelian language, virtue, or religion, for that matter. All these other goals are tacitly disposed of. Only property and its necessary implications, i.e., life and liberty, belong to the province of political power. But "all this only for the public good." Why does he add this at the end? Does it not go without saying? For example, "in the defense of the commonwealth from foreign injury": Is this not necessarily for the public good? And the same applies also to the regulation and preservation of property. Why does he add that?

Student: [. . .]

LS: But still, "for the regulation and preservation of property" means, of course, not the property of all.

Student: [. . .]

LS: How?

Student: Property in the sense that everything belongs to the king.

LS: Oh, I see. That is possible. But also this other point is to be considered. As will appear later on, Locke admitted the necessity sometimes to rule without law, that is, in certain situations. Now in these cases there is still a standard limiting the exercise of political power, and that is "for the public good." In other words, it is sometimes necessary to transgress the law for a conscientious government, but that can only be for the public good and not for the private good of the ruler. At any rate, the public good is of the greatest importance, as is indicated by the motto of the whole work: *Salus populi suprema lex esto.* The safety of the people, the well-being of the people, should be the supreme law. That is an old formula,[vii] but it takes on a special importance in Locke because of the famous "individualism" of Locke, because it is not the safety or well-being of the individual which is the supreme law but the safety of the community as a whole. And that is a question which we have to watch. To what extent does Locke provide for the safety of every individual as distinguished from the safety of the people as a whole?

So after having defined political power here . . . what did he achieve by this definition? That is of some importance with a view to the present-day discussions about scientific teachings. Locke defines[7] political power [here] just as Lasswell defines power or the various subdivisions of power.[viii] What question arises here after Locke has defined what political power is? The definition is sufficient, but quite a few questions of course arise. For example, why does he say property and not virtue? Why does he make the executive entirely dependent on the legislative? And all these kinds of questions. So the definition needs a justification, doesn't it? In other words, a mere definition is no good at all. You must really show reasons why this definition is preferable to any other definition, why it is really an adequate definition. To answer this question, Locke writes the sequel, especially the next chapter. In order to understand political power as defined and see that it is necessary and "derive it from

[vii] See, e.g., Cicero, *De Legibus*, 3.3. 8.

[viii] Lasswell famously defined politics as "who gets what, when, and how" in his book with that title. See Harold Dwight Lasswell, *Politics: Who Gets What, When, and How* (New York: McGraw-Hill, 1936).

its original," as Locke puts it, we must go back to the state of nature. By looking back to the state of nature we will understand why political power in the sense defined is necessary, and secondly, in whose hands is the political power. Granted that this is political power as he defined it, it is still a question in every society who ought to exercise it and who ought to possess that power that could be possessed by a usurper as well as by a legitimate ruler. We must go back behind the positive, the arbitrary and accidental, to the essential.

Political power is allocated in every society to given individuals or to a given man or body of men. But the question arises: With what right is this done? That is positive—this given society *in fact* allocated power to these and these people. That is arbitrary in itself. In order to understand the legitimacy of a given arbitrary action, we must go back to the nonarbitrary, to the natural. And one way of doing that is to go back to the state of nature. This term was used already before, by Hobbes, and Locke simply takes it over with some modification. What is the state of nature, as Locke understands it? The state of nature is a state in which men are subject only to the natural law. For positive law, being the work of a political society, presupposes political society. The state of nature would be a state in which political society does not exist, and therefore a state in which only the natural law could be a law for man. But why is this state of nature, as Locke calls it, "a state of perfect freedom"?[8] If man is subject to the natural law, why is it a state of perfect freedom? In other words, why does Locke lay greater stress here on the freedom than on the subjection to the natural law? "Perfect freedom": that could mean no restraint whatever. Well, perhaps we will find that this subjection to the law of nature is not so very important or incisive as it seems to be at first glance. You see that Locke also calls it a state of equality. But in the first place he calls it a state of freedom, "a state *also* of equality." Why does he do that? Why does he speak first of freedom and then of equality?

Student: It seems that basically it would include that.

LS: Freedom and equality are frequently mentioned together, and have been by broad tradition mentioned together. But Locke suggests here an order: freedom first, equality afterward. Why does he do that? Does the equality follow from the freedom?

Student: Well, if men are naturally free, then they are by nature free from subjection to others.

LS: In other words, freedom means perfect freedom from the subjection to others. And if every man is free from subjection to any other man, then all men are equal in this respect. That is what you said?

Student: Yes, and this might reflect[9] what he means by subjection to natural law, that this subjection is really a subjection to one's own will. So this again would reflect upon the equality of everyone.

LS: I do not see clearly how this fits with your first suggestion, which I understood to mean that by speaking first of freedom he makes clear what equality can mean in the context. That equality does not necessarily mean an equality of natural gifts, for example, but means only that equality which is the reverse side of absence of subjection of man to man. Perhaps we leave it at that.

You see Locke's procedure. He makes this assertion regarding the state of nature. He asserts that, but it needs some proof, doesn't it? I mean, for example, we have to clarify the relation between this equality which Locke admits and the natural inequality which he cannot deny, although he is silent about it. So we need some proof. In what way does he give a proof?

Student: Well, in spite of the fact that [a] man may be gifted in intelligence, nevertheless, a brutish man could slay him.

LS: Yes, that is Hobbes's argument. But what does Locke do? Nothing like looking into Locke to find out about that. Look at the beginning of paragraph 5.

Reader:
This equality of men by nature the judicious Hooker looks upon as so evident in itself and beyond all question that he makes it the foundation of that obligation to mutual love amongst men on which he builds the duties we owe one another, and from whence he derives the great maxims of justice and charity.[ix]

LS: And so on. In other words, his argument, his proof, is a quotation from Hooker. But it is interesting that the quotation from Hooker is meant to prove the equality, not the freedom, so that he would have to argue as follows. If Hooker establishes the equality of man, then we would have to infer from that equality the liberty, which he can easily do. If all men are by nature equal, no man is by nature subject to any other man. Then all men are by nature free in a sense, free from any subjection to any other man. But you see then he quotes Hooker, and you made some good remarks on this subject. But let us look at the context in Hooker. Now the context is this. It is a discussion of natural law. I cannot read the whole thing, but I read the beginning: "Touching the several grand mandates which being imposed by the understanding faculty of the mind must be obeyed by the will of man, they are by the same method found out, whether they import our duty toward God or toward men."[x]

And then he speaks of the duty toward God and quotes: "'Thou shalt love the Lord thy God with all thy heart, with all thy soul, and with all thy might,' which law our Saviour doth term the first and great commandment. Touching the next, which as our Saviour added, is like unto this . . . "[xi] And then comes the quotation which Locke gives. In other words, in the first place Locke omits completely the duties toward God, and he also changes somewhat the meaning of the quotation, as becomes clear if you compare Locke's own remarks with Hooker's context. By proper emphasis one can bring this out: "This equality of men by nature the judicious Hooker looks upon as so evident in itself and beyond all question that *he* makes it the foundation of that obligation to mutual love amongst men on which *he* builds the duties we owe one another, and from whence *he* derives the great maxims of justice and charity."

All these things which Hooker does are not done by Locke. Locke is only interested in the conclusion which verbally agrees with his assertion: all men are by nature equal. The whole natural law context, the teaching of the duties of justice and charity, have no place in Locke's teaching proper, as will gradually become clear. Hooker is concerned with knowledge of duties. That is the reason why he speaks of equality. Locke is concerned with the equality,

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[ix] *Second Treatise*, sec. 5.
[x] Richard Hooker, *Of the Laws of Ecclesiastical Polity*, 1.8.7. In the original: "toward man."
[xi] *Ecclesiastical Polity*, 1.8.7. In the original: "the first and the great commandment."

which is an entirely different proposition. Now let us read the beginning of the next paragraph.

Reader:
But though this be a state of liberty, yet it is not a state of license; though man in that state have an uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it.[xii]

LS: Can you explain to me the end of this sentence? That man has no right to destroy himself, that is intelligible. That he has no right to destroy any creature in his possession, let us say, a lamb, not to speak of a fly. "Any creature": he doesn't say "any human creature." But now what does the end mean: "but where some nobler use than its bare preservation calls for it"? "Its" must refer to "creature"; it cannot refer to "man." What does that mean? Does anyone have another edition with a different reading, perhaps?[xiii] I didn't look it up. It is a very strange thing. Let us assume he meant by this *his* bare preservation. But why should man not be entitled to kill a lamb if no other purpose is involved than man's bare preservation? It could of course refer to the state of man prior to the Flood, in which man was not yet allowed to eat meat. And then it would be a reference to the problem of the relation between Locke's state of nature and biblical history. But then we have to change the text, which is a very hard thing to do. Do you have an idea?

S**tudent:** Just a suggestion: Could it not be that all Locke means by this qualification at the end of the sentence is that if you talked of a subhuman creature (and Locke also could talk of a subhuman creature),[10] [then] the purpose of man would be a nobler purpose than the bare preservation of its being? He is attempting to rule out destruction for its own sake.

LS: But still, who is meant by "its"?

Student: The creature's, the destruction of any creature simply for the sake of destruction.

LS: Yes, but "its bare preservation" is not enough. For example, what about a lamb and a wolf? He tries to preserve the lamb against the attack of the wolf. And there is no nobler purpose than the bare preservation of the lamb. It wouldn't work. The wolf would not be applicable because it is not a creature in its possession. I really don't understand it. But you had an idea?

Student: I was going to suggest that I thought that was the meaning of it—that even there you would be justified in killing the wolf so that you could eat the lamb when you needed to. In other words, that every aspect in nature could lead to the self-preservation of man as a higher . . .

LS: I see. Well, it is perfectly sensible, that is, the eating of the lamb rather than the mere preservation. That makes absolute sense. But you think it even of the case of the wolf and the lamb. I don't believe that, because the wolf is not a creature in his possession. It is a hard

[xii] *Second Treatise*, sec. 6.
[xiii] Neither *Works*, vol. 4, nor the sixth edition gives a different reading.

passage; there is no question of that. And perhaps one has to see what the critical edition of Locke, which is expected sooner or later, will say on this passage.[xiv]

Student: Couldn't there be some slight irony about nobility, the possibility of nobility?

LS: I see. Yes, sure, that would be nobler. But the irony would still be there, because Locke would find it somewhat funny that man's self-preservation is in a way, from his point of view, nobler than the self-preservation of the lamb. That might be. But is this really a good and sufficient explanation of the passage? I wonder. I have never understood that. Even a joke must make sense. I do not know. Now if he would say this, as Mr. Goerner has suggested, that would make sense: man cannot frivolously destroy any creature, not even a fly. That would make sense; but that is not what he says.

Student: [. . .]

LS: I don't believe that anything suggested up to now is sufficient as the real explanation of this section as stated by Locke. I advise you to give it more thought and see whether you can make head or tail of it. At any rate, what he says, obviously, is that man doesn't have an uncontrollable liberty. He has not even the right to kill himself or anything. But here the point seems to be this:[11] bare preservation somehow doesn't seem to be sufficient. Now let us read the sequel.

Reader:
The state of nature has a law of nature to govern it which obliges every one; and reason, which is that law, teaches all mankind who will but consult it that, being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions—[xv]

LS: Now watch here. You see here he does not identify the law of nature with the law of reason, but with *reason*. That is of some importance, namely, that is in connection with other passages of some importance in order to understand the precise meaning the law of nature can have in the last analysis for Locke. Because when *he* speaks of reason,[12] [he does] not imply a law. But when[13] *we* speak of the law of reason,[14] [we] would of course imply a law. That is of some importance, namely, that remains a problem: To what extent is the law of nature truly a law? Hobbes had said that the law of nature in itself is only a[15] [theorem] or conclusion, i.e., the law of nature is not a law.[xvi] It becomes a law only if understood as the will of God or, for that matter, if it is embodied in the positive law of the commonwealth. And something of this kind, I believe, is happening in Locke, too. And, you see, he says it "teaches all mankind who will but consult." That is the first indication of the problem of promulgation of the natural law. The natural law is known to all men who will but consult reason; now whether this consultation is so simple that every man is capable of it remains to be seen.[16] But still, the content of the natural law, [the negative point], is now clear[17] "No one ought to harm another man in his life, health, liberty, or possessions."

Reader:
for men being all the workmanship of one omnipotent and infinitely wise Maker—all the servants of one sovereign master, sent into the world by his order, and about his business—

[xiv] The critical edition prints without comment the passage as it appears in the Hafner edition used here.
[xv] *Second Treatise*, sec. 6.
[xvi] *Leviathan*, chap. 15 end.

they are his property whose workmanship they are, made to last during his, not one another's, pleasure—[xvii]

LS: That is the passage which I saw. Here a distinction is made between man being God's property and man being God's servant. And we must see later what Locke says about the difference between servants and property. This passage to which you referred at the end of chapter 4 is[18] of some importance [here]. It is possible that Locke here indicates a kind of theology, as we can call it, in which the relation of man to God is conceived of in terms of [a] servant to a master, and not property. In other words, if that is so, man would have very definite rights over against God, whereas in the case of property as property, property does not have rights over against the owner. This formula[19] of course occurs also in earlier times, but [it] takes on a very great importance in the late seventeenth century, for example, in Leibniz,[20] [by whom] it is said very forcefully that every soul demands from God with right that He pays due consideration to it.[xviii] And that could be said, perhaps, to be implied in the biblical teaching, but [there] it is[21] of course only implied. That here a creature of God as a creature, and with an intelligence, has a right against his creator because it is an intelligent creature is very forcefully stated by Leibniz, a contemporary of Locke. And something of this kind, I believe, is implied also in what Locke here indicates. But that must await further confirmation. Now let us go on.

Reader:
and being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such subordination among us that may authorize us to destroy one another, as if we were made for one another's uses as the inferior ranks of creatures are for ours. Every one, as he is bound to preserve himself and not to quit his station wilfully, so by the like reason, when his own preservation comes not in competition, ought he, as much as he can, to preserve the rest of mankind, and may not unless it be to do justice to an offender, take away or impair the life, or what tends to the preservation of the life: the liberty, health, limb, or goods of another.[xix]

LS: Now let us stop here. You see that is the first presentation of Locke's natural law teaching, as presented here. There is a natural law, meaning there are certain natural obligations or duties of man. And the duties can be reduced to one formula: man has the duty to preserve mankind, including himself. There is no question at this stage of rights. Any rights would be derivative from this. But Locke makes here one qualification: "when his own preservation comes not in competition." So the duty to preserve mankind is qualified by the observation that one's own preservation comes first. I have a higher duty, a more pressing duty, to preserve myself than to preserve other men. And later there will be then the right to self-preservation as the basis of all these obligations. But we must go step by step. Now here

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[xvii] *Second Treatise,*, sec. 6.
[xviii] Gottfried Wilhelm Leibniz (1646-1716), German philosopher and mathematician. Strauss is referring to Leibniz's *Monadology*, § 51. See *G. W. Leibniz's Monadology*, trans. Nicholas Rescher (New York: Routledge, 1991), section 51, 173: "But in simple substances there is only an ideal influence of one monad on another, which can have its effect only through the intervention of God, insofar in the ideas of God one monad demands with reason that God should have regard for it in regulating the others from the very beginning of things. For, since one created monad cannot have any physical influence on the interior of the other, it is in this way alone that the one cannot be dependent on the other. (See *Theodicy*, secs. 9, 54, 65, 66, 201; Abridgment, obj. 3)." This translation from the French has been slightly modified.
[xix] *Second Treatise,* sec. 6.

we have the duty of preserving mankind. Now if I have that duty to preserve mankind, I have of course also the duty to do everything necessary for preserving mankind. Now let us assume there are vicious men who would like to destroy as many men as they could. Then it is my duty to prevent them from doing so, and I may not be able to prevent them from doing so except by killing them. Therefore I have the duty to kill them. And in this stage of the argument, there is no question whatever of my self-preservation or my self-interest. It follows from the duty under which I am to preserve mankind. And that he makes clear in the next paragraph[22].[xx] To make the main point: everyone in the state of nature has a right to execute the law of nature, the law of nature dictating the preservation of mankind and therefore all such actions as are required for the preservation of mankind, i.e., to punish the enemies of mankind, perhaps by death. Why is this necessary, that everyone should be by nature the executor of the law of nature? In the middle of paragraph 7 he says: "the law of nature would, as all other laws that concern men in this world, be in vain, if there were nobody that in the state of nature had a power to execute that law and thereby preserve the innocent and restrain offenders."[xxi]

So the natural law belongs to that class of laws that concern men in this world. There may be laws which concern men in the next world, e.g., the laws of religion, perhaps. The law of nature belongs to the laws which concern men in this world, and these laws which concern men in this world require a human enforcement agency. That is the crucial point. The whole conclusion would not follow if the natural law were enforced by God. There may be such an enforcement in the other life, but Locke does not speak of that here. Locke demands that there be an enforcement of the law of nature in the state of nature by human agents. And that condition is not fulfilled if man does not have the power, if *each* man does not have the power, to execute the law of nature. Each man must have it because all men are equal, and therefore there is no reason why this right or duty should be assigned to some men to the exclusion of others.

Now in order to understand this fully, which we cannot do here, one would have to read what Locke says in the *Essay Concerning Human Understanding* regarding conscience. The enforcement by the conscience was the more traditional view—the bad conscience. This does not exist in Locke's teaching. And he gives the example of the spectacle of a city being sacked by a hostile army.[xxii] He says: There you don't see any conscience. The conscience is not something which all men possess in any effective way. Since there is no enforcement of the natural law by the conscience, there must be an enforcement of the natural law by men. If there is no enforcement, the natural law is not a law. A law is a law only if it is enforced, and if it is a law concerning men in this world, it must be a law enforced by man.

Now he pursues this further. He[23] [says] , of course, in the sequel (paragraph 8): "so far as calm reason and conscience dictate."[xxiii] Surely the conscience may dictate that a petty theft should not be punished with death, but the question arises whether this dictate of the conscience will be followed by man, and will he who will transgress that dictate of the conscience suffer from it if other people do not make him suffer for it? Locke would say: Perhaps some people would suffer from ill deeds but others would not. And they must be made to suffer by other human beings; that is the only way in which the natural law can be effective. Now let us read the end of paragraph 8:

[xx] *Second Treatise*, sec. 7.
[xxi] *Second Treatise*, sec. 7.
[xxii] See *Essay*, 1.2.9.
[xxiii] *Second Treatise*, sec. 8.

Reader:
Which being a trespass against the whole species and the peace and safety of it provided for by the law of nature—

LS: Here you get a more general formula for the law of nature as Locke introduces it here. The law of nature provides for the peace and safety of the human species. All those things are good which contribute to the peace and safety of the human race, and all[24] [those] things are evil which affect adversely the peace and safety of the human race. The natural law, in other words, is a strictly social law. It has nothing to do with the improvement of the individual. It has only to do with the peace and safety of the human race. That leads to a very grave question: What about war? What about the fact that there exists a number of states which are potential enemies? Does it not lead to the consequence that war is altogether evil or, rather, to the distinction between just and unjust wars and the problems stemming from that? We will turn to that later.

Reader:
every man upon this score, by the right he hath to preserve mankind in general—

LS: Because if he has a duty to preserve mankind in general, a right derives from that—

Reader:
may restrain—

LS: But you see the transition from duty to right means a transition from "must" to "may." Do you see that? If it were "by the duty he hath to preserve mankind in general he *must* restrain, or where it is necessary, destroy"—but since the duty is now weakened to a right, the "must" is weakened to a "may."

Reader:
by the right he hath to preserve mankind in general, may restrain, or, where it is necessary, destroy things noxious to them—

LS: You see the delicacy of Locke. He speaks first of things and not of men, but note—and we will find later—these "things" imply other human beings.

Reader:
and so may bring such evil on any one who hath transgressed that law, as may make him repent the doing of it and thereby deter him, and by his example others, from doing the like mischief.[xxiv]

LS: Locke is collecting his courage until he will dare to say you may kill other human beings. Here he speaks only of the destruction of things noxious to men and of making men repent. They cannot repent if they are dead. Of course, they could have repented at the last moment; I do not deny that. But he does not yet speak here of killing other human beings. We come to that. And in the final formulation at the end of the paragraph: "a right to punish the offender, and be executioner of the law of Nature."[xxv] Not a duty. Originally it was a duty.

[xxiv] *Second Treatise*, sec. 8.
[xxv] *Second Treatise*, sec. 8.

Student: Wouldn't it seem that, as you pointed out, the duty is diluted when he uses the word "may"? Wouldn't this flow directly from the primacy of another duty, the duty to preserve oneself? And you may endanger yourself seriously in attempting to execute this against an offender, against someone else.

LS: Yes, but I think the real argument of Locke—I mean, if one would disentangle it—would be this. There is first a duty to preserve mankind, where your own case is a very unimportant and subordinate example. Then you have to defend mankind and you mustn't think of yourself. The self-preservation of the individual as the real root of the whole thing comes to the fore only very slowly. The first step, we can say,[25] [is what] Locke does[26] when he replaces the traditional natural law by a natural law whose sole content is the peace and safety of the human race.

Student: But he has already laid the basis for this in paragraph 6: "when his own preservation comes not in competition, ought he, as much as he can, to preserve the rest of mankind."

LS: But still there is a difference whether something is said in a subordinate clause, and then whether it comes to the fore, surely.[27] Because this little thing, that his own preservation comes not in competition, is really *the* reservation, one might say, by virtue of which he will turn upside down this whole edifice of a law of nature, which is formally of the same character as the Thomistic law but the content of which is limited to the peace and safety of mankind and nothing else. If we look back from the end we will see this: that the right of self-preservation cannot be safeguarded normally if there is not a state of peace; therefore, the duty to preserve peace in order to safeguard the basic right of self-preservation. Now that theoretically would surely lead to a universal state with no possibility of war. But since this is absolutely impossible for practical reasons from Locke's point of view, you have to limit the practical demands to a domestic duty, and then have a generally prudent foreign policy, which consists in making as few wars as possible. But I think that ultimately we come back to the self-preservation, although this takes some time.

Now we see at the beginning of paragraph 9 that Locke himself—who is so cautious and speaks so frequently of Hooker—draws our attention to the novelty of the doctrine. He says: "I doubt not but this will seem a very strange doctrine to some men." He is so incautious to say "very strange." He could have left it at "strange." In other words, that was a novel doctrine. You find some traces of it in Grotius, for example, in book 2, chapter 20, paragraph[28] [7] and book 2, chapter 25, beginning.[xxvi] [Aquinas], for example, in the *Summa*, second part, question 64, article 3, denies that a private person may kill a sinner.[xxvii] He is not speaking, of course, of self-defense, which is another story. And similar remarks you find in Suárez, *Treatise on Law*, book 3, chapter 3.[xxviii] The strangeness of the doctrine, the novelty of the doctrine, is due to the fact that Locke demands a human enforcement of the law of nature independent of the civil government. In the Thomistic doctrine it is understood that the magistrate has, of course, such a power, but not the private individual. Locke demands that every human being have this power because there is no other enforcement in this life except the enforcement due to human agents.

[xxvi] Hugo Grotius, *De Jure Belli ac Pacis* 2.20.7 (§2), 2.25.1 (§1).
[xxvii] Aquinas, *Summa Theologica* 1-2, q. 64, art. 3.
[xxviii] Francisco Suárez, *De Legibus ac Deo Legislatore* 3.3.

Now he then goes over, at the beginning of paragraph 10, to another right which seems to be absolutely subordinate from the lofty point of view from which Locke starts. We have to think entirely of the peace and safety of the human race and not of ourselves. But of course:

"Besides the crime which consists in violating the laws and varying from the right rule of reason, whereby a man so far becomes degenerate and declares himself to quit the principles of human nature and to be a noxious creature, there is commonly injury done to some person or other, and some other man receives damage by his transgression; in which case he who hath received any damage has, besides the right of punishment common to him with other men, a particular right to seek reparation from him that has done it—"[xxix]

Now this right to seek reparation has a different status from the right to punish offenders, on the following ground. The right to punish offenders applies equally to all men, to the sufferer as well as to the mere spectator. The second one applies only to the sufferer. Now what is the practical difference between these two things? Well, you see Locke is not so sure that spectators of injustices will act on that. But if they suffer—that is his low view of man—if their land has been stolen, they will go after that fellow who has stolen it. In other words, the right to seek reparation is rooted immediately in the right of self-preservation, whereas the right to punish, a universal law, is derivative in a much higher degree and therefore much less effective. And now you see why the state of nature must become a state of war. Because if this right to take reparation is the real [. . .] indignation, anger, selfishness is involved, passion is much more present there than if you see and look objectively at a spectacle of[29] injustice and say, "This injustice must be punished." The state of nature becomes necessarily a state of war because of the passionate concern with self-preservation.

In paragraph 11 he continues the subject. The report said everything that has to be said about the two biblical quotations. Locke changed the meaning of the quotations completely by taking them out of the context. And especially is this true of the first: "Whoso sheddeth man's blood, by man shall his blood be shed." That Locke accepts, but he is silent about the sequel, "for man was created in the image of God."[xxx] Why does he drop that, that man is created in the image of God? I mean, what is the practical meaning which follows from that? Well, does he not compare these criminals to wolves, lions, and tigers and other noxious creatures and forget completely the consideration that while they deserve capital punishment, yet they might be deserving of a respect beyond that because they are human beings, because they are created in the image of God? The whole doctrine of self-preservation as Locke means it and executes it is incompatible with the notion of man being created in the image of God. So Locke is really consistent when he limits the quotation as he does here. We do not have to go into that. Locke is very tough. This part of the Lockean teaching has been played down by a grateful tradition. Gratitude is a great virtue, but it also must be prudently and judiciously applied.

In the sequel[30] we find an important reference to the problem of promulgation, where he says he is certain there is such a law of nature, "and that too as intelligible and plain to a rational creature and a studier of that law . . . "[xxxi] So that means not to man as man; you must be a studier of that law and, as we know from other writings of Locke, you must be a philosopher

[xxix] *Second Treatise*, sec. 10.
[xxx] Gen. 9:6.
[xxxi] *Second Treatise*, sec. 12.

to know that. That is not the conscience speaking in you which tells you what your duties are; you have to do much more than that. And that of course means it is absolutely impossible for men in the state of nature to be a studier of that law, as will become clearer as we go on. And the law of nature must be known in order to be obeyed. There can be no natural law here in the state of nature. What there can be very well is of course the desire for self-preservation. That will be effective whether men know the corollaries to that right or do not know [them], because of the instinctive desire very powerful in every living being and therefore in man in particular. Now another point which I would like to mention is in the next paragraph. Let us read that.

Reader:
To this strange doctrine—viz., that in the state of nature every one has the executive power of the law of nature—

LS: You see he calls it again "strange," so we cannot overlook that.

Reader:
I doubt not but it will be objected that it is unreasonable for men to be judges in their own cases, that self-love will make men partial to themselves and their friends, and, on the other side, that ill-nature, passion, and revenge will carry them too far in punishing others, and hence nothing but confusion and disorder will follow; and that therefore God hath certainly appointed government to restrain the partiality and violence of men. I easily grant that civil government is the proper remedy for the inconveniences of the state of nature, which must certainly be great where men may be judges in their own case—[xxxii]

LS: I have just one comment. You see the objection which he quotes contains the proposition "God hath certainly appointed government." In Locke's comment this is dropped, and there is no reference in the whole work to a divine appointment of government.[31] The New Testament passages speaking of such a divine appointment are never quoted. Government is a purely human institution. Locke uses this opportunity here for drawing our attention to that.

Now we cannot possibly discuss everything. I note one point of the utmost importance in the next paragraph, where Locke says in effect that international law, as it is now called, the law of nations, is the natural law. The question is raised: Have there ever been men in the state of nature? And Locke says: Well, at least societies, states, are in the state of nature. Now in the context, that means that if the states as states are with each other in the state of nature, they are subject only to the law of nature. The only international law which is binding, which is strictly speaking a law . . . which at first glance looks like a binding law is the natural law as understood by Locke. That is again a Hobbean doctrine. All international law based on custom or agreement or something of this kind is at most derivative. The true natural [law], that is, international law is the natural law which commands peace and has therefore certain corollaries; for example,[32] [that] war should not be conducted in such a way as to make peace absolutely impossible, and that representatives of the two parties should be peacefully treated, and this kind of thing. That is of very great importance. Mr. Cox, in his dissertation, develops this at great length, the true doctrine of international law as Locke meant it.[xxxiii] Again, the result is of course much tougher than one would normally think, because here again the

[xxxii] *Second Treatise*, sec. 13.
[xxxiii] Richard Cox. See session 6, note v.

priority of self-preservation applies to states as well as to individuals. The principles of prudent power politics, as some people call it, follow necessarily from that principle.

Student: In his use of the term "independent governments," couldn't that be interpreted as governments in themselves that are not dependent, that is . . .

LS: For example, the local government of Chicago is not an independent government. It has to take orders from the federal government. Or, for example, a baron in a feudal government is not the head of an independent government. That he means. Why does he not call it a sovereign state? Locke doesn't like the word "sovereign" and he avoids that, but that is what he means. In case there is any doubt, on the middle of page 128:[33] "it is not every compact that puts an end to the state of nature between men, but only this one of agreeing together mutually to enter into one community and make one body politic."[xxxiv] So contracts between states which do not lead to a merger of those states—the subjection of both to one government, like Egypt and Syria now[xxxv]—ordinary contracts between governments, do not terminate the state of nature. That means in practice that each contracting party reserves a right of interpreting the contract. That would follow. Because there is no common judge[34] to whom in the case of conflict both are *obliged* to submit.

Student: Couldn't that also imply that a government which is an absolute monarchy is still a body politic in the state of nature?

LS: Yes, that is left open here entirely. What form of government there is in this individual body politic is left entirely open. You see in the next paragraph, there follows another quotation from Hooker, where[35] Locke refers explicitly to the authority of the judicious Hooker. But here he makes it clear that he deviates from Hooker, by saying at the end: "But I, moreover, affirm that all men are naturally in that state and . . . "[xxxvi]

Hooker hadn't spoken of the state of nature at all. Hooker had at most said that some men are accidentally in the state of nature. Locke asserts, on the other hand, that all men are naturally in the state of nature. The doctrine of the state of nature is the most obvious difference between Hooker and Locke. All the other things, e.g., that every man is the executor of the law of nature by nature, follow from that. Locke has made it as clear as he could without destroying the possible effect of his book that he is in disagreement with Hooker. But most interpreters and readers were not particularly interested in that difference and therefore they neglected this point.

Student: I am not entirely clear on[36] the force of his "so till by their own consents they make themselves members of some politic society." From what you have been saying, it seems that you are saying that even after a man is a member of a society, that this law of nature still has a basic operation.

LS: We come to that, but still he is no longer in the state of nature. I suggest this provisional answer. In civil society, the law of nature obtains but is supplemented by positive law. In the state of nature, only the law of nature obtains. As for the meaning of this particular remark, I

[xxxiv] *Second Treatise*, sec. 14.

[xxxv] Strauss is referring to the United Arab Republic, a union formed in 1958 by combining Egypt and Syria. The union lasted only until 1961, when Syria seceded from it.

[xxxvi] *Second Treatise*, sec. 15. The passage continues: "remain so till, by their own consents, they make themselves members of some politic society . . . "

suggest that we look at the end of paragraph 4, where we find a similar formulation. He says all men are "equal one amongst another without subordination or subjection; unless the lord and master of them all should, by any manifest declaration of his will, set one above another, and confer on him by an evident and clear appointment an undoubted right to dominion and sovereignty."[xxxvii] This he drops now.[37] Not divine appointment but human arrangement, i.e., the social compact, terminates the state of nature. This is what he has in mind. And that is of course prepared by his silence on divine appointment in paragraph 13, to which I referred.

Now we come to the third chapter, "Of the State of War," which obviously has of course the meaning of an opposition to Hobbes. Hobbes had simply identified the state of nature with a state of war of everybody against everybody. Locke says: No, they are fundamentally different. The state of nature is a state of peace, where all men live in peace because they obey the law of nature. The state of war comes in only if one is so wicked as to hurt another man, and that seems to be a rare and very unlikely case. And therefore he has a clear-cut distinction between the state of nature and the state of war. And that is seen even in paragraph 16, that a state of war is a state of unprovoked aggression. So strictly speaking, only the aggressor is in a state of war, and I am then as the offended party forced to do something which could also look like a warlike action. But primarily the state of war resides in the soul of the aggressor. You see, however, here that there is some reference, a strong reference, to the right of my defense as distinguished from the defense of mankind: "it being reasonable and just I should have a right to destroy that which threatens me with destruction." One may destroy a man who makes war upon him. He[38] no longer speak[s] here of the spectators, who out of a sense of duty and only out of a sense of duty help the offended party. Here it is a question of self-defense rooted in the desire for self-preservation. He speaks here of a wolf or a lion. He may kill such a man for the same reason that he may kill a wolf or a lion. In the preceding reference (paragraph 11), he had spoken of a lion or a tiger. Now what is the difference between lion and tiger and lion and wolf? I think it is very obvious. There were no lions and tigers in Britain, but wolves were there. Locke comes closer to home in that, self-preservation. That is at least the simplest explanation I can think of.

In the next paragraph there is an important passage which we should read.

Reader:
To be free from such force is the only security of my preservation; and reason bids me look on him as an enemy to my preservation who would take away that freedom which is the fence to it; so that he who makes an attempt to enslave me thereby puts himself into a state of war with me.[xxxviii]

LS: Freedom, the opposite of slavery, is a fence to preservation. This would seem to mean that the fundamental phenomenon is self-preservation; and freedom is derivative from self-preservation. Generally speaking, my prospects of preserving myself are greater if I am the judge of what to do or to omit in order to preserve myself. But this freedom of judging of the means of self-preservation and of acting on such judgments, that is the essence of freedom as Locke understands it. But let us go on.

Reader:

[xxxvii] *Second Treatise*, sec. 4.
[xxxviii] *Second Treatise*, sec. 17.

He that, in the state of nature, would take away the freedom that belongs to any one in that state, must necessarily be supposed to have a design to take away everything else, that freedom being the foundation of all the rest—[xxxix]

LS: Do you see this inversion? It was first the fence, and then the foundation. That is not a contradiction; it is only a different articulation of the same phenomenon. If something is *the* necessary and sufficient means for something else, as a means for the end it is subordinate to the end, but as *the* necessary and sufficient means to the end it can also be called the foundation of the end. Is this clear? Take another example to make it clear to you. Well, let us assume that all things which are important to us can be obtained by money. Then money owes its value entirely to the things which can be bought with it; and yet, since it is *the* necessary and sufficient means, it becomes the objective of men. Same thing. But in theoretical precision one must say freedom is derivative from self-preservation and not the other way around.

And then he speaks later on[xl] of the appeal to heaven. What is the appeal to heaven? If two men, or two states, for that matter, have a conflict, a disagreement, now they are not subject to a superior power on earth. That is the definition of the state of nature. They appeal to heaven. What does that appeal to heaven mean?

Student: It is the request for God to give victory to a particular cause.

LS: It is a reference to a biblical passage. But what does Locke have in mind? I mean, how does this appeal to heaven look in practice?

Student: Well, in practice it is empty . . .

LS: It is not empty in practice.

Student: Oh, it does not avoid the conflict; the conflict still takes place.

LS: Would it not be correct to say that Locke understands by an appeal to heaven an appeal to the sword? Does it not amount to this? Why is it a fair interpretation of Locke to say it is an appeal to the sword?

Student: Well, if someone comes at you with a pistol, and you appeal to heaven and don't take up a pistol yourself, you violate the duty to self-preservation.

LS: But still there is another point. For example, if you take the biblical story as you see it in Judges and Jephthah, you would see that what Jephthah primarily means was an appeal to the justice of his cause, for which God will vouch.[xli] It is not simply an appeal to force. Locke changes the meaning by the context. What entitles him, in his opinion, to make that change? Well, the consideration that the result of such a fight as is necessary, since there is no common superior on earth, is not necessarily favorable to the just cause. He speaks later on of the great robbers in the world who win.[xlii] The outcome of such conflicts is by no means

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[xxxix] *Second Treatise*, sec. 17.
[xl] For example, at *Second Treatise*, secs. 20, 21.
[xli] Judges 11:27.
[xlii] See *Second Treatise*, sec. 176.

necessarily favorable to justice. Therefore it is[39] in fact an appeal to might, to force, to the sword, and not to right. That is what Locke means by that.

I draw your attention to a remark in the beginning of paragraph 21, where Locke says: "To avoid this state of war . . . is one great reason of men's putting themselves into society and quitting the state of nature."[xliii] The remarks of Locke about the state of nature are very ambiguous and contradictory. There are passages in which the state of nature is presented as a social state, but there are equally many passages—I have not counted them, but there are plenty of passages—in which Locke identifies society with civil society. We disregard now families, which are not very important. Society means for Locke ultimately the same as civil society. There is no prepolitical society, although in a way Locke prepares that.

Now let us read this passage at the end, where he speaks of Jephthah[40].

Reader:
Had there been any such court, any superior jurisdiction on earth, to determine the right between Jephthah and the Ammonites, they had never come to a state of war; but we see he was forced to appeal to heaven: "The Lord the Judge," says he, "be judge this day between the children of Israel and the children of Ammon" (Judges xi. 27), and then prosecuting and relying on his appeal, he leads out his army to battle. And, therefore, in such controversies where the question is put, "Who shall be judge?" it cannot be meant, "who shall decide the controversy"; every one knows what Jephthah here tells us, that "the Lord the Judge" shall judge. Where there is no judge on earth, the appeal lies to God in heaven. That question then cannot mean: who shall judge whether another hath put himself in a state of war with me, and whether I may, as Jephthah did, appeal to heaven in it? Of that I myself can only be judge in my own conscience, as I will answer it at the great day to the supreme Judge of all men.[xliv]

LS: All the theological language which Locke uses cannot conceal the fact that the question, "Who shall be judge?" means everyone shall be judge. He says: "I myself can only be judge in my own conscience, as I will answer it at the great day to the supreme Judge of all men." But that is beyond his cognition, as he states in other passages. Humanly speaking, in such appeals the parties to the conflict are the judges.[xlv]

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[1] Deleted "by."
[2] Deleted "Hobbes."
[3] Deleted "being."
[4] Deleted "these."
[5] Deleted "legislative."
[6] Deleted "between."
[7] Moved "here."
[8] Deleted "Because."
[9] Deleted "upon."
[10] Deleted "Therefore."
[11] Deleted "however."
[12] Deleted "you do."
[13] Deleted "*you speak*."
[14] Deleted "you."

[xliii] *Second Treatise*, sec. 21.
[xliv] *Second Treatise*, sec. 21.
[xlv] It is unclear whether the session ends at this point or whether pages have been lost. Strauss, it should be noted, says nothing about chapter 4 of the *Second Treatise* in this or the next transcribed session.

[15] Deleted “theory.”
[16] Moved “And now the sequel.”
[17] Moved “the negative point.”
[18] Moved “here.”
[19] Deleted “which.”
[20] Deleted “in which.”
[21] Moved “there.”
[22] Deleted “(paragraph 7).”
[23] Deleted “speaks.”
[24] Deleted “these.”
[25] Deleted “which.”
[26] Moved “is.”
[27] Deleted “But.”
[28] Deleted “387.”
[29] Deleted “an.”
[30] Deleted “(paragraph 12).”
[31] Deleted “Always.”
[32] Deleted “the.”
[33] Deleted “(line 7 or so).”
[34] Deleted “who in the case of conflict.”
[35] Deleted “he.”
[36] Deleted “the, that it was.”
[37] Deleted “and.”
[38] Deleted “does.”
[39] Deleted “an appeal.”
[40] Deleted “(paragraph 21).”

Session 11: February 24, 1958[i]

Leo Strauss: What is the mechanism for assuring the protection of large possessions, given the fact that the majority would be poor?[ii] How can you overcome the difficulty that the poor majority might confiscate the property of the rational and industrious, i.e., the rich? Remember the comments of Aristotle. They would do that. I mean, I am speaking now from the point of view of a wealthy property owner—which I am not, but he would say that all these terrible things like the confiscatory income taxes are due to these political arrangements. Now how would Locke take care of that? Let us guess now. We have not yet come to his political discussion in the narrower sense.

Student: Locke would take care of it by[1] [showing] that property is directly related to politics, and that therefore property owners have a more equal share in politics . . .

LS: How can you be sure of that?

Student: How can you assure it?

LS: Yes, because one man, one vote. How would you go about it if you had this wicked design?

Student: Well, primarily by making the laws and interpreting the laws to my own purposes.

LS: Yes, but you don't make the laws. You have some legislative assembly.

Student: If the legislative assembly represents the interests of one group rather than of the . . .

LS: Well, how to do that? The poor may be very wicked and try to confiscate that. Well, the simplest thing is of course a property qualification. So we have to keep this in mind later on, because the interpretation has been suggested more than once that Locke's doctrine is a strictly democratic one. There are some remarks about rotten boroughs, which are of course an excellent institution for protecting property. That you can easily see. There are many people in a city like Manchester, and then you go to a rotten borough where there are four dependents of a noble lord, and they vote as he wants them to vote. We have to keep this in mind. But there are some other points which we also must take up. You did not explain the difference between earth and world. I was very anxious to hear that.

Student: Well, in the beginning, Locke takes up the institution of property as it existed in the state of nature and therefore has to mention the less cosmopolitan term "earth," but later on,

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[i] There is no transcript for session 10, which met on February 19. Remarks made in session 11 indicate that Joseph Cropsey conducted the class that day and addressed chapter 5 of the *Second Treatise*, or perhaps more generally the theory of capitalism. The session was probably not recorded.

[ii] Strauss responds to a student's paper, read at the beginning of the session. The reading was not recorded.

when he talks about profits and trades and civilized society, he has to use the word "world" in order to sound more cosmopolitan, perhaps.

LS: But still there was no space to conquer. There was no government in outer space of any kind. And all the commerce that was going on . . . The problem is this. I grant you, I mean . . . but I don't believe that you solved it.

Student: Well, I didn't actually try to figure it out. I saw the distinction but I could not . . .

LS: No, it is necessary to think about it. I fully agree that it is a very [good] question. Now you had a reference to the manufacturing society coming up in the seventeenth century, and one has to consider that. But apart from the general prejudice that one has to read each book in the light of historical information about the time in which it was written, apart from this general prejudice, what reason do you have for that? Because Locke might have been completely unaware [of] or indifferent to newfangled devices of a manufacturing society. And you cannot assume without any evidence that this book has any reference to it.

Student: I only suggested that you had to know the conditions of the society at the time and how that might have influenced his thinking, because he cannot think beyond that society or beyond his age.

LS: I mean, the present prejudice in favor of economic history, be it of Marxist or non-Marxist origin, is not enough reason, but there is an element of truth in what you say. Locke wrote this chapter on property with the assumption that he says something there which has not been said by everyone all the time. That we must assume in the case of a sensible man. Therefore he must have known the preceding doctrines regarding property, and he must have had them in mind regardless of whether he explicitly refers to them or not. That would be the proper historical study; and this is not so difficult to do because there have been some people, some scholars, who have put these things together, and they are really extremely simple. For example, if you take the first chapter of Tawney's *Rise of Capitalism*, you get a reasonably good account of the traditional notion of property.[iii] And in a word, it was this: that there are moral limitations to both the acquisition of property and to the use of property. And if you had this notion in mind and then read Locke, you see immediately his very great originality, because while in the state of nature he has very severe limitations on acquisition—for example, you must not hoard rotten apples—he has no such limitations in the state of civil society. And similarly, regarding the use of property, he has said something in the *First Treatise* about the duties of justice and charity to starving fellow men. Icy silence on this whole thing in his chapter on property. So it is not unfair to Locke to say that his teaching on property is characterized by the fact that all moral limitations on acquisition as well as on use of property are dropped. And that is a very big thing.

Incidentally, it is convenient for most people to read Tawney's first chapter, but it is in a way better to read the first book of Aristotle's *Politics*, because there you have it in the greatest precision as to what the traditional teaching regarding what the limits to acquisition and limits to use are. And then you have it immediately. Nothing can be more stunning than the contrast between Aristotle and Locke.

[iii] R. H. Tawney, *Religion and the Rise of Capitalism* (London: J. Murray, 1933).

Now there is another point. The inequality of property which is made possible by money is there, and Locke says that certainly. But this of course is not a moral justification. That you can, by virtue of money, get very wealthy people and also very poor people is perfectly true, but still that is not a moral justification. You can also get very wealthy people, perhaps, by other admittedly immoral devices. What is the moral justification which Locke gives for the introduction of money? That is a crucial point. Why is man in the state of civil society permitted to amass money without any limit, whereas there are severe limitations on acquisition in the state of nature? Why is this morally defensible? Locke faces this question and answers it; otherwise, this book would be . . . this chapter would . . . Now what is the difference? Let us look at the poor people in the state of nature and the people in civil society who are also mostly poor[2] [although] also we find many very wealthy [people]. What is the difference? Is a poor man better off in the state of nature, where there is no wealth, or in civil society, where there is[3] wealth? What does Locke say? Well, I remember this sentence in which it was said that a king of the savages is worse clad, worse fed and worse housed than a day laborer in England.[iv] Now if even the king of the savages is worse off than a day laborer, how poor will be the condition of a day laborer, if any, among these savages? So in other words, the moral justification of unlimited acquisition is that it is to the benefit of everyone.

Student: Well, might not the position of a day laborer perhaps be even better if acquisition of gold and so forth was limited in civilized society as well as in the state of nature?

LS: That depends on the salutary effect of accumulation of wealth—the argument you still have here against the New Deal in every present-day discussion. How does the argument go? That temporary unpleasantness like unemployment is well paid for by the fact that the overall standard of living of everyone, including the unemployed, is better than if initiative were stifled by confiscatory taxes, by unreasonably high doles for the unemployed, and so on. That is the argument. In other words, to state it colloquially and crudely, no one has such a theory of capitalist society, of . . . as originally understood, as Locke. The difference . . . and Mr. Cropsey could speak about this subject with infinitely greater competence than I—one great difference between Adam Smith and Locke is that Locke has to establish the position which Adam Smith then could expound. By Adam Smith's time, the fundamental issue, the abolition of the traditional "value system," had been taken care of. Adam Smith didn't have to justify it any more morally . . . by that time this was settled. In Locke, this brief[4] but extremely difficult chapter had this very great importance as the classic doctrine of the foundation, the theoretical foundation, of the capitalist theory. And therefore, whatever we may think about this theory, some reverence is certainly deserved because of its tremendous impact.

Now there is another point which I would like to mention. I do not believe that you distinguished clearly enough between labor as a title to property and labor as the origin of value. These are two entirely different considerations. Labor is originally the title to property. As such it is abolished in civil society. Many of these rich people have property which they did not acquire in the sweat of their faces. That is a well-known fact. And Locke thinks that is perfectly all right, and he makes it perfectly clear that is finished. But labor still remains the origin of all value, and that has one crucial implication. That labor which originates value in society does not have to be my

[iv] *Second Treatise*, sec. 41.

labor or the labor of any rich man. He uses *en passant* the example: the turf which my servant cuts. It was not my labor, but the servant's labor; but by virtue of the legal title to that, or maybe the natural law title to that servant's labor which I have, to the work of his hands, it is my property.

Now I would like to turn to another consideration. One of you asked me prior to the class why I changed my opinion regarding Locke, at least relative to what I said in my section in *Natural Right* on Locke.[v] Well, fundamentally I think what I said is sound, but it is of course not exhaustive. And very important considerations would have to be added, more or less along the lines of what Mr. Cropsey said last time. I will try to state this as follows: Generally speaking, I presented Locke's doctrine there in the following light. In the traditional natural law doctrine, all duties and rights of men are derived from the ends or end of man. This end was conceived of as articulated; in other words, consisting in the Thomistic presentation of three ends, of three parts.[5] [It] doesn't make any difference[6] how this is done in detail, but the crucial point is that there is a perfection of man, a perfection of the nature of man. And only by looking at that perfection of man can you understand the duties. That was done away with by Hobbes, and in this respect Locke merely follows Hobbes. And—I'm speaking now from my memory—generally speaking I stated the issue as follows. It is no longer the end of man but the beginning, as I called it; in other words, that which is fully actual in every human being. The end is not fully actual. It remains in most people most of the time a potentiality, because not all men all the time are fully virtuous. But[7] beginnings, the initial urges,[8] are fully actual in every man all of the time; and that is reduced by Hobbes to the formula, "self-preservation": all men, all of the time, care for their self-preservation, whereas only [a] few care,[9] [some] of the time, for their virtues. That seemed to be so very realistic. You can easily see that this is down-to-earth . . . And now of course that is open to some objections, because there are heroic men who sacrifice themselves, their lives, and that creates a certain difficulty. And Hobbes would probably say: Well, that is very bad . . . Well, there are some exceptions, but broadly speaking it is true that you can count on people's selfishness much more than you can count on their virtue.

Now I think that is correct, but there is also another way of stating it which must be brought into some harmony with what I stated. The traditional notion could be developed as follows. That[10] [which] man ought to do in order to reach his end, that is the content of the natural law. The natural law tells man what he ought to do. The natural law is a law which man can transgress. This notion is accepted by Hobbes and Locke, only that ground of the natural law as a law which man can transgress is different. It is no longer the full end of man but mere peace, peace or mere . . . But this has still the character of an ought in Hobbes. That you can see when you read chapters 14 and 15 of the *Leviathan*, and[11] [it] also appears very clearly from Locke. But at the same time, something seems to come to the fore in Locke which perhaps is not there in Hobbes, at least not as clearly, and that is another notion of the natural law: a natural law as a law which man cannot transgress, and therefore on which you can depend. The law of supply and demand would be a simple example of such a law, not to say the law of digestion. You know this law cannot be transgressed. But here there is a great difficulty. Let us take the law of supply and demand as a type of a natural law, a law not made by man or dependent on his own arbitrariness, [a law] which man cannot transgress. There is the undeniable fact that legislators enact laws which contradict these laws of supply and demand. Any regulation of economics could be said to

[v] *Natural Right and History*, 202-51.

have this effect. These alleged laws which man cannot transgress can in fact be transgressed. Therefore they also retain, in a way, the character of natural law in the sense of law which can be transgressed. But I think what these people would say is this. These natural laws which men cannot transgress, e.g., supply and demand, or that there must be a proper proportion between the compeller and the compellee . . . that's a Machiavellian law: there must be some proportion between the ruling force and the ruled force, because if they are not strong enough at the top they won't be able to compel. In the *Federalist Paper* number[12] [9], where Hamilton gives a brief sketch of the new discoveries of political science made in the eighteenth century, they all have this character of natural laws which cannot be transgressed. Now that means, in fact, however, they are transgressed. Otherwise they would not have to be formulated. It means then this: these natural laws cannot be transgressed without visibly bad consequences for the community at large in this life. These subtleties have to be considered very seriously because they are at the bottom of the whole modern movement, but[13] should be distinguished from the natural law which has a pure . . . and which is rooted in self-preservation and the demand for peace, on which I put this emphasis. I hope that satisfies your question.

And now I come back to one point. I had not looked at[14] [Locke] for some years, and I was absolutely shocked about the tremendous difficulties of a chapter[15] which I was reasonably sure that I had mastered. Now I have noted some grumblings from some former students that there were some difficulties of which I had not disposed, and somehow I was aware of that, but not as much as I am now. Now I put to myself a very . . . question. What is the plan of that chapter? I have no answer to that, but I would say that before one sees the plan of that chapter one should not claim that one has understood that chapter. If I had raised that claim ever in the past, I eat my words. Now I will tell you what I found out about the plan, and I submit it to your consideration. Perhaps some of you can do better.

First, not consent but labor is the origin of property (paragraphs 25 to 30). Second, the limitation of acquisition, i.e., by labor, of course (paragraph 31). Third, the appropriation of land. Prior to that he had spoken only of the appropriation of the fruits of the earth and of beasts (paragraphs 32 to 39). Fourth, the relation of land and labor as regards value. The land is nothing; labor is everything (paragraphs 40 to 44). And then,[16] [fifth], the way from the beginning, labor and limited acquisition, to now money and unlimited acquisition (paragraphs 45 to 51). Well, paragraph 51 is really a kind of conclusion, which one could take as a separate part and in which he returns to the surface, and all these rather terrible things which have been said within the chapter are no longer mentioned.

Now before we turn to a detailed discussion, I would like to remind you of the broad themes of the chapter, which are quite in the clear. Now I distinguish two themes. First, God has given us plenty. However, the giving of God, God's giving, can be called labor. And therefore this labor is the title to appropriation. For example, labor in the sense of appropriation would be picking berries. But there is a certain difficulty here, which Locke indicates in paragraph 28[17]. Here he raises the question:

"He that is nourished by the acorns he picked up under an oak [I don't know why he takes such an unpleasant food, and not rather berries—LS], or the apples he gathered from the trees in the wood, has certainly appropriated them to himself. Nobody can deny but the nourishment is his. I

ask, then, when did they begin to be his? when he digested? or when he ate? or when he boiled? or when he brought them home? or when he picked them up? And it is plain, if the first gathering made them not his, nothing else could. That labour put a distinction between them and common—"[vi]

In other words, a very lazy fellow lying in the sun, say, under a banana tree, and that labor of picking up the banana, that would be . . . Now if you look, however, at this enumeration a bit more closely, you see he mentions five actions. And let me try this old device which I know only from experience and for which there is no proof: that what is in the center is somehow important. Now in the center we find boiling. Let us reflect for a moment on boiling. What is the difference between boiling and these other things, the other actions mentioned?

Student: It changes them.

LS: Yes. The only transforming done deliberately, because when you eat, you destroy in a way; you do not transform. Transformation. Now that was an old story in the natural law doctrine, that [the] transforming of a found thing rather than the mere finding makes it your property. Yes, but what does this mean now, in the context of Locke, if we have to put the emphasis on transformation rather than on mere transportation, if I may call this transportation? Because transformation is absolutely necessary. Why? "Why" is answered by Locke at great length, and so I believe we are on the right track. Forget my insane method of finding it and look only at the sensible result. Why is it so? Because what nature gives us, as Locke emphasizes, is only the worthless, the almost worthless materials. The plenty given to us by God, or Nature the kind mother, is only potential wealth. In itself it is valueless. So in actuality, we have not original plenty but original penury. Or another way of putting it,[18] [whether] labor is the origin of all value to speak of, this is the one broad theme.

And now this leads me to the second. The conclusion of this first trend was original penury and not original plenty. Original penury demands of course limited acquisition, because if there is not enough for everyone to lead a comfortable life, then limitations of the acquisition by everyone are in order . . . limit acquisitions in the state of nature. Now that Locke teaches limited acquisition in the state of nature is obvious, and there is no further ado. Yes, but [also] turn it[19] around. The limited acquisition in the state of nature is a moral law, we can say. But also, we don't need the moral law. It is a necessity because there is so little. Man could not help acquiring very little in the state of nature because there was very little around. [There is] unlimited acquisition, however, in civil society, and for two reasons. Men cannot help trying to acquire as much as they can get if there is much around. And secondly, this terrible, vicious thing, the desire for having much, the *amor sceleratus habendi*[20], as he calls it in the Latin,[vii] the wicked love of possessing, is so far from being wicked that it is conducive to plenty. And therefore, a reevaluation of the traditional notion is absolutely in order. Avarice and greed, traditionally regarded as vicious passions or vices, are the mainstay of civilized society. It is a modified Machiavellianism, but not the Machiavellian vices, i.e., desire for rule, for power, for glory, but these more prosaic vices, these . . . if I may call them, are the mainstay of civilized society. Now these broad themes, I think, appear with perfect clarity from [the] fifth chapter, and the only

[vi] *Second Treatise*, sec. 28.
[vii] *Second Treatise*, sec. 111.

difficulty is to discern them, to discern their inner order, because what Locke did was not to set forth the clear and really compulsory, compelling argument, once you grant the premise. It is a very well thought-out argument, although a very poorly presented argument—and deliberately poorly presented, because Locke knew quite well what he was doing: that he was challenging the whole moral tradition. Now I have read some place in a writing by . . . that Locke was a typical Englishman, a Whiggish Englishman of the seventeenth century who presented these typical Whig views.[viii] But he also notes—I do not know on the basis of what evidence—that the Whigs didn't like the book.[ix] So there was something different, and it is our task to understand this novel thought which Locke presented in an ancient . . .

Now let us then turn to the sequence of the chapter and try to get as much out of it as we can. I must confess that I am more satisfied than I was for many years that the real interpretation of the fifth chapter has still to be given. And I encourage those of you who are interested in this subject to devote their energies to this problem. And especially the plan of the chapter seems to me very obscure. What one would have to do is to establish in the case of each paragraph, to reduce each paragraph to a heading, to one sentence, let me say: "What does he say there?" And then to find the real order. That has not been done by anyone up to now, as far as I know.

Now at any rate, the chapter on property, chapter 5, is almost in the center of the work, as you can easily see by simple addition of the number of chapters of the *Two Treatises*. Certainly paragraphs 37 and 38, which occur within this chapter, are the central paragraphs of the whole work. Paragraph 38 is the center of this chapter, and that means the center of the whole book coincides with the center of the chapter on property. It is even externally central. Now let us read the first sentence.

Reader:
Whether we consider natural reason, which tells us that men, being once born, have a right to their preservation, and consequently to meat and drink and such other things as nature affords for their subsistence; or revelation, which gives us an account of those grants God made of the world to Adam, and to Noah and his sons; it is very clear that God, as King David says (Psal. cxv. 16), "has given the earth to the children of men," given it to mankind in common.[x]

LS: Now let us stop here first. Now, we see reason and revelation agree as to man's having a right to[21] [his] preservation and hence to food and drink. But Locke doesn't say "food and drink," as you can see. He uses a very limited term: "meat and drink." Do you see why? I mention this in passing because it is in itself a little thing but it is connected with a very great problem. What does revelation teach about the status of man's food in the early period?

[viii] Strauss might have in mind J. W. Gough, *John Locke's Political Philosophy* (Oxford: Clarendon Press, 1950). Strauss's review of that work is reprinted in *What is Political Philosophy? And Other Studies* (Glencoe: The Free Press, 1959), 302-5.

[ix] It is possible that Strauss is referring to historian J. H. Plumb. Nonetheless, the claim is supported by a number of contemporary historians. See, e.g., Richard Ashcraft, *Revolutionary Politics and Locke's Two Treatises of Government* (Princeton: Princeton University Press, 1986), 572. Ashcraft cites a number of historians, including Mark Goldie, Julian Franklin, J. R. Western, J. P. Kenyon, H. T. Dickinson, Martyn P. Thompson, and J. H. Plumb.

[x] *Second Treatise*, sec. 25. In the original transcript the passage is abridged.

Student: They couldn't eat meat, and I suppose they were limited to a vegetarian diet.

LS: Only after the Flood.[xi] You see, that it is very important. Man did not enjoy at his creation the full natural right. He was deprived of it by being forbidden to eat meat. That has to do with the whole question of what is the relation of the state of nature to early biblical history, a problem which goes through the work of which we may find other traces later. So there is really a difference, as a matter of fact, between the teaching of revelation and the teaching of reason. As you can see, he speaks later on of those grants God made of the world to Adam and to Noah. The two grants differed precisely regarding the status of meat, as you can easily see if you look that up. By the way, why does he say, "being once born, have a right to their preservation?" Because prior to being born, man is not a man. Well, again, was Adam born? And I believe one has also to consider a distinction between "once born" and "reborn." And whether the reborn would have need of . . . is another matter. But this only as one thing one has to consider.

Now I come to the main point. Locke starts from a certain interpretation of the biblical teaching. You see, Locke says first "the world" and then gives the biblical quotation in which "the earth" occurs. The question has something to do with the fact whether the biblical teaching . . . is not emphatically telluric and does not see the earth properly, as Locke implies, as a small part of the world, but identifies as it were—as we popularly also do—the earth with the world. I remind you of the passage about the heavenly bodies in the first chapter of Genesis, where the heavenly bodies seem to be presented as mere instruments for illuminating the earth, and not the earth as a small part of an infinite universe which came to be seen at that time. In other words, a kind of telluric parochialism, as it were.

Now let us try to come to the main point of immediate importance. Locke starts from a certain interpretation of the biblical teaching. God has given the world or the earth to mankind in common. And this means in itself that there is no divine right, nor a natural right of any individual to any plot of land, for example. This right must be positive right. It cannot be natural or divine right since both reason and revelation are said here to agree. Now this thesis, however, from which he starts—God has given the earth to mankind in common—could easily lead to communist consequences. If God has given the earth or the world to mankind in common, every private property could be construed as a violation of divine or of natural right. Private property is theft under all conditions. This is the first statement of the problem. Now[22] as Locke says in the sequel, [there are two] ways of establishing the right of property, i.e., of private property. First is Filmer's way, and the second is the non-Filmerian way. Locke does not make subtle distinctions between the non-Filmerian ways. That is one polemical advantage which he does not wish to forgo. Now on Filmer's basis, he says, only the universal monarch has property, and no one else. Therefore, if there is to be property, Filmer's premise must be rejected. As I say, he appeals to our desire to have property of our own as an additional reason to reject this doctrine so favorable to all kinds of slavery as Filmer's is. By natural or divine right the earth is common, but by human institution or compact there may be property. In other words, property owes its status to human institution or to compact. But this human institution or compact is not a violation of divine or natural right but a legitimate modification of[23] or addition to it. This we can take to be a roughly traditional position. Now let us use the last sentence of paragraph 25 to get this clear.

[xi] According to the biblical account, man was allowed to eat meat only after the Flood. See Genesis 9:2-4.

Reader:
But I shall endeavour to show how men might come to have a property in several parts of that which God gave to mankind in common, and that without any express compact of all the commoners.[xii]

LS: So you see, by using the word "express compact," Locke leaves open the possibility for what?

Student: Tacit compacts.

LS: Tacit compacts. That is the loophole which he leaves. Now I referred you to a discussion in Grotius's *On War and Peace*, book 2, chapter 2, paragraph 2, section 5, where Grotius speaks of an express compact which consists of a division of the surface of the earth and a tacit compact which would allow occupation, telling everyone what you occupy[24] [is] yours. This tacit compact for occupation is not excluded by Locke, and it will even be accepted by him in a modification. What is the modification which Locke will accept? Is mere occupation enough? If you occupy a land, you put down a flag and so on.

Student: You have to use it.

LS: You have to use it. So not mere occupation, but labor. Very good. But the other question is, of course, whether this requires a compact . . . Here Locke excludes only express compacts, not tacit compacts. Now let us go on.

Student: In fact, he is using the word "tacit" in paragraph 50: "tacit and voluntary consent."

LS: Yes, that refers to gold and silver, the introduction of gold and silver and not to appropriation, the basic or fundamental appropriation. That is very important insofar as all property in civil society rests on money, and money rests on a tacit compact. We can say that all property owned in civil society rests not on natural right simply but on a compact agreeable with natural right. That is true and very important.

Student: We will probably get to this later, but does Locke forbid—[xiii]

LS: That would be a confirmation of Mr. ——'s thesis, and that shows again how good it is always to look up the quotations in the Bible or the references to the Bible in the context. It must be done judiciously, because sometimes Locke may wish to show how the Bible deviates from what he says about natural right, but still it is good to note.

Let us now turn to the [next] paragraph.[xiv] Locke tries here to show how appropriation is possible without an express compact. How does he proceed? If you read the third sentence.

[xii] *Second Treatise*, sec. 25. In the original transcript the passage is abridged.
[xiii] The tape was changed at this point.
[xiv] *Second Treatise*, sec. 26

Reader:
And though all the fruits it naturally produces and beasts it feeds belong to mankind in common, as they are produced by the spontaneous hand of nature; and nobody has originally a private dominion exclusive of the rest of mankind in any of them, as they are thus in their natural state; yet, being given for the use of men, there must of necessity be a means to appropriate them some way or other before they can be of any use or at all beneficial to any particular man. The fruit or venison which nourishes the wild Indian, who knows no enclosure and is still a tenant in common, must be his, and so his, *i.e.,* a part of him, that another can no longer have any right to it before it can do him any good for the support of his life.[xv]

LS: Which exoteric and given phenomenon does Locke have in mind here? He doesn't use such simple terms. To which fact does he refer? Why must they be "so his . . . that another can no longer have any right to it before it can do him any good for the support of his life"? Which mysterious fact does he mean by that? Eating. In other words, what Locke says is this. Everyone has by nature a right to self-preservation, and that requires the right to eat, because we cannot live without eating. One can say this is the most obvious difference between Hobbes and Locke: that when Hobbes speaks of self-preservation, he doesn't say much about food; whereas Locke, who is much more sober, says that before you can use any stones for killing your enemies, you must be strong, i.e., you must have eaten. In other words, appropriation, and such an appropriation as takes the thing appropriated completely out of any other man's possible appropriation, eating, is given with the right to self-preservation. And here you do not have to ask anyone. No compact in any manner, shape, or form enters. That is the first point. There is a kind of[25] appropriation which is necessary and which has nothing whatever to do with any compact, *so it is a strictly natural right.*

The statement that the earth has been given to mankind collectively becomes meaningless if each individual has not been given the right to appropriate entirely to himself what he needs for his sustenance. But let us consider the following difficulty. He speaks here of the wild Indians and the venison, but let us now take another example of a beast which has been mentioned before, the lion, or maybe the wolf. What is the status of the wolf? The wolf also has a need for self-preservation, and he can fulfill this self-preservation by eating men. So what is that? Men would probably not like to eat wolves because they are not very tasty, I have been given to understand. But still, how would you argue?

Student: [. . .] In other words, man might eat the wolf, but the wolf has no right to self-preservation where man is concerned, or has no rights at all for that matter. The world is man's.

LS: Yes, that is true, but still, if we assume for one moment that the starting point of Locke is not the biblical teaching, nor the traditional natural law teaching, but the right to self-preservation alone, there follows from that also the right to the appropriation of food. But what about the beasts? I mean, how would he argue on this basis? Well, you cannot speak of a right if there is no possibility of a wrong, and no such possibility exists in the case of brutes. And therefore it doesn't make sense to apply that, whereas it would do in the case of man. That is fundamentally the way in which Hobbes disposed of the difficulty.

[xv] *Second Treatise*, sec. 26

The right of self-preservation—but this means also, of course, if we stick to that: man has no right except to what is needed for his self-preservation. And we can also draw another conclusion. In this respect, regarding self-preservation, all men are in the same position. If, however, self-preservation is the most important consideration, then men are equal in the most important respect and all other inequalities which Locke of course admits can be disregarded because they do not have the same status as this basic *equality*. Now once we admit on the basis of the right to self-preservation the equality of all men, we arrive of course at natural freedom, because if all men are equal they are necessarily free. And also one can deduce freedom directly from self-preservation. Man cannot preserve himself [as a slave] as well[26] as he can preserve himself as a free man.

Now let us turn to the next paragraph. Man has a right to food. That is clear. But that is not a full answer to the question. Why does this Indian have a right to *this* fruit or to *this* venison? That is something different from the right to fruit or venison in general. How did he acquire that right? . . . If I had the right to food by nature, by virtue of the right of self-preservation, I can get food also by stealing or robbing. Why does the right to self-preservation give me a right to this apple which no one owns, where it does not give me a right to an apple which another has in hand? It is not sufficient to return to the right of self-preservation. We also have to consider how the acquisition can be just or unjust. Not every acquisition of what you need for your self-preservation is just. And now Locke takes up this question, and what is his general answer?[27] [Man's] right to his food is derivative from his labor, from his body. His body is his, and therefore everything he mixes his body with becomes his. But of course he mixes his body with that act of robbery or beating or killing by which he accrues the apple[28] [from] the hands of someone else. So it must mean that what is implied is this: the thing to be acquired must be masterless, ownerless, before. One could perhaps say this: the earth is not, strictly speaking, the common property of mankind, as it appears at the beginning, but the earth is ownerless. What is the term in English law for the things which are ownerless, like the air? At any rate there are things which are ownerless, e.g., the air, the ocean, and so on. The earth is ownerless originally and given to appropriation, but the appropriation, in order to be just, must not be an appropriation effected at the cost of any other human being. This can only mean to take things, to appropriate things which are not yet owned by anyone. "Owning" means here "possessed." It does not have the precise meaning of "legal title."

But there is a very great implication. Labor is the title to property. Labor is *the* necessary consequence of self-preservation, and self-preservation is the fundamental need of man. From this it follows that labor is coeval with man. There was no time at which man could live without labor, and here you see another antibiblical implication of Locke, a point to which I referred when we discussed the *First Treatise*, paragraphs 45 to 47, where he discusses the biblical curse. Now if labor is coeval with man by nature, labor cannot be a curse. Locke uses the term "labor" when he quotes the biblical verse, [Gen. 3:19 in section 45 of the *First Treatise*].[xvi] So labor is coeval and labor is not a curse. You can also turn around the argument as follows. If labor, meaning now very hard labor, is a curse, it has the same status as the curse on woman that she should bring children to birth with pain. But this can be circumvented, according to Locke; he says so explicitly. If medicine finds devices, women can bring their children into the world without any pain. Similarly, the curse on labor can be circumvented. If people can find devices

[xvi] In the original transcript: "inaudible."

so that they live without labor, without sweat, they are free to do so. At any rate, labor is in itself a natural necessity which, with the development of civilization, can be disposed of to some extent. Labor-saving devices, a two-day week, are morally a possibility, whether Locke has thought of it in these terms. He did think of labor-saving devices, of course, but whether he thought of a two-day week I do not know.

Now you see also at the end of paragraph 27: "this labour being the unquestionable property of the labourer, no man but he can have a right to what that labour is once joined to, at least where there is enough and as good left in common for others."[xvii] That is a very important qualification. But let us assume that there is not "enough and as good left in common for others." What will happen then?

Student: The law of supply and demand affects the value . . .

LS: Yes. But in this statement, there is a certain amount of food available, and Locke creates the impression at the beginning[29] [that] there was always plenty. But here he refers to the possibility that there may not always be plenty. What will happen in such a case? Everyone has only a title to what he labors on, if only by digging it up. But if there is not enough, if there is an extreme famine?

Student: Well, then there is war, if everyone has a right to his own self-preservation.

LS: In other words, this famous qualification made in the first or second chapter, where his self-preservation does not come in competition? Good. So the whole doctrine of natural right regarding property in the state of nature depends on the premise that there is enough. If there is not enough, he naturally has the Hobbean state of war of everybody against everybody.

You see also from this discussion that every *individual* has the right to appropriation. There is no primary collective, mankind. That is completely lost sight of as the argument proceeds. Human providence, we can say, has its source in the individual and in the individual's concern for himself.

As for the beginning of paragraph 28 and this difference between a right based on need and the right based on transformation, I have already mentioned before. So let us see. We have then reached this point. To repeat, the right to appropriation is based [on], is a necessary corollary from, the right of self-preservation. And rightful appropriation in a state of non-extreme scarcity can only be labor, which means the appropriation of something not yet appropriated by another human being. In a state of extreme scarcity, this qualification must be dropped. And Locke tries to show in the sequel, as you [will] see, that if you make it dependent on explicit consent of every commoner, no appropriation would be possible, and therefore man would perish. This is incompatible with the whole situation of man.

I would like now to turn to paragraph 30, although there are quite a few other things here. We must try to cover the chapter today if possible and then go on. Let us now turn to paragraph 30 and read the beginning.

[xvii] *Second Treatise*, sec. 27.

Reader:
Thus this law of reason makes the deer that Indian's who hath killed it; it is allowed to be his goods who hath bestowed his labour upon it, though before it was the common right of every one. And amongst those who are counted the civilized part of mankind, who have made and multiplied positive laws to determine property, this original law of nature, for the beginning of property in what was before common, still takes place; and by virtue thereof what fish any one catches in the ocean, that great and still remaining common of mankind, or what ambergris any one takes up here, is, by the labour that removes it out of that common state nature left it in, makes his property who takes that pains about it.[xviii]

LS: Let us stop there. You see he says here "this law of reason"; he[30] no longer refer[s] to the law of revelation. "This law of reason": that suggests there may be another law of reason. And in what respect? He refers to it then as "this original law of nature"; we can say the original law of reason as distinguished from a later law of reason. The original law of reason deals with the *beginning* of property. There will be another law of reason or of nature regulating property after the introduction of money. That we shall see later. So we have to distinguish between two laws, natural laws, regarding property. And only the first limits acquisition to labor and limits also acquisition . . . Labor as pain, toil: he refers to that. There is of course the biblical motive from the curse of Adam, but there is also the other consideration. Rights must be acquired. There are no given rights of property, which ultimately means, in the context of the whole chapter, no given plenty. The plenty is due to human work. Generally speaking, a right deals with a balance of advantage and burden, of achievement and reward. In other words, you have no pleasure[s] without having pains for them. That is the notion behind that. That has a broad and deep basis in Locke's moral teaching, according to which it is [the] evil from which we fly, rather than the good which attracts us, which guides our orientation. In other words, pain, felt pain or maybe even anticipated pain, sets us in motion, not anticipated pleasure. That he develops at great length in the *Essay Concerning Human Understanding*.[xix]

Now let us turn to paragraph 31. Locke has now emancipated acquisition by the individual from any social control. I acquire with perfect justice what I need for my self-preservation, and I acquire it by labor. And then the question arises: If this is so, can I then not acquire in an unlimited way? And that would of course lead to constant conflict. Hence there is some need for the limitation of acquisition. But, as he has indicated before, there is plenty. If there is plenty, there is no need for limitation. Plenty, absolute plenty, and limitation of acquisition are mutually exclusive. We must draw the conclusion, which will be confirmed later, that there is no unlimited plenty. There is enough for everyone's use, for his self-preservation, to protect him against starvation, but not more. Therefore acquisition must be limited to the useful, and that means no one has a right to hoard rotten apples or apples which are likely to rot because he cannot eat them. Man can accumulate the useless as much as he wants. Let us consider that for one moment. Toward the end of the chapter he will make a distinction between two kinds of products of the earth: one is apples, and the other is nuts. Now they are very different because, for example, if you hoard nuts you can still eat them in a year, but you cannot hoard apples (at least not most

[xviii] *Second Treatise*, sec. 30. The last part of the last sentence quoted here should read "made his property who takes that pains about it."
[xix] *Essay*, 2.21.31ff.

types of apples) as long. And therefore you can hoard [nuts] because the right of nature entitles you not only to take what you eat now, today, but you may of course think of tomorrow. These things are not developed by Locke, but they are still implied. You may think of tomorrow. You may even think of a month from now. And so the question is, what this fellow needs for his sustenance today, you need for your sustenance two weeks from today. This delicate question is not even discussed by Locke, but the implication is clear by the principle of not rotting [but][xx] not the conflicting need of others. That is not the consideration which you have to take, but whether it will rot in your possession. So you can hoard nuts because you can eat them next year. You can hoard apples only for, say, two or three or four months.

Student: I think this throws some light on the money question. I think you have to distinguish then between two kinds of money: money in the state of nature and money in civil society. Because when he speaks strictly of money in terms of silver and gold, these are perhaps more imperishable than nuts.

LS: Sure.

Student: But in principle they are no different than nuts in terms of trade. Because when you trade, when you buy and sell with silver and gold, you really barter, whereas if you buy and sell with your paper money you don't really barter. Now I don't know if there was paper money in our sense in Locke's time, but there was such a thing as letters of credit, I believe, in terms of the international banking system.

LS: But he does not go into this at all.

Student: But I think you could say Locke was aware of a kind of money, of a letter of credit . . .

LS: Yes, but his argument is much more cunning. I was working up to that point. Now what he says first is this. You may . . . you are entitled by natural right not only to appropriate what you eat today, but you may appropriate also what you will eat a month from now. You do not have to consider the need of others, then; you have to consider only whether the things to be hoarded will rot or not, because your self-preservation one month from now may take precedence over X's self-preservation today. Locke at least does not exclude that. Now we come to the nuts. Now as to the nuts, I can accumulate as many as I want, because maybe next year I will starve. That the other fellow will starve now, that is his unfortunate situation. But still, nuts are under certain conditions, I must confess, useful. If I would hoard nuts sufficient to keep me alive for a century, that would clearly be against natural law. Now we come to something else, and that is the useless things, e.g., gold, silver, pebbles, and so on. What does natural right dictate regarding the hoarding of gold and silver? Of course not coins. What does he say?

Student: Unlimited.

LS: Unlimited because of its absolute valuelessness. You can't eat that. And now here is, however, the beauty, if you can apply the word beauty to such terrible things. This right, the unlimited hoarding of gold and silver in a time when they are absolutely useless, is transferred

[xx] In the original transcript: "inaudible."

into civil society where they are eminently useful. And therefore there is a right to unlimited acquisition of gold and silver, and therefore of course of everything gold and silver can buy, based on this fantastic construction which makes some sense in the state of nature. Now Locke knew that this was . . . and was in no way conclusive, but it was his way of introducing the thought of a moral legitimacy of unlimited acquisition based on an argument, of course, and not on this argument, the argument being that in such a society based on trade, commerce, and industry, everyone is better off than he would be in a state of nature. And if there are some people who are hurt in such a society, who would perhaps be worse off than a king of the savages, or maybe even a day-laborer among the savages, that would be an accidental misfortune which a broad-minded legislator and teacher of legislators would not consider. That, I think, is the immediate connection of these passages.

Student: Even in the state of nature . . .

LS: That is Locke's assertion: unqualified acquisition. This childlike red Indian who enjoys these pebbles or glass.

Student: We talk about comfortable self-preservation rather than strictly in terms of . . . but he seems to cast the whole thing in terms of . . .

LS: Well, I think Locke's answer to that objection is easy. Comfortable self-preservation is absolutely impossible among savages. Comfortable self-preservation requires a society based on money . . . And in that life, in that poor life of savages, it can only be a question of self-preservation. I believe that this is borne out by the chapter, but I am perfectly willing . . .

Student: Does Locke make a statement that money does exist in the state of nature?

LS: That is a difficulty, but I must state that the exposition which Mr. — gave me some years ago satisfied me that money antedates the establishment of civil society. This of course cannot mean coined money . . . but I do not know. This problem is very complex. You must not forget that Locke . . . There are statements in chapter 5 to the effect that property proper exists only in civil society, and that will of course also apply to that.

Student: If gold and silver should have any value at all before the . . . of civil society, that would mean that not only the hoarder is going against natural right but the man who mines gold and silver, too.

LS: Who mines?

Student: Well, one man might say: I'll trade it to a man who has a good deal of land for food, and I will mine it. The assumption Locke makes is you can only take something out of nature if you are leaving as good an amount for someone else. Now gold and silver are rare, and therefore the man who goes out and mines them is obviously taking more than his share . . .

LS: But that is left completely beyond the jurisdiction of natural right because of its uselessness.

Student: Well, I was saying that if it had any useful value at all, that would be a crime.

LS: Sure. Oh, you meant only that. But of course, that there is something extremely fishy regarding . . . you see from his teaching regarding conquest. I think we mentioned this last time. According to Locke, the conqueror may not take away land from the commoner, but he may take away all their gold and silver. And this means of course also that . . . to their gold and silver mines . . . Which of course means, simply stated, for example, if there were . . . in order to get hold of gold and silver mines, it really doesn't do any injustice to these people because these are by natural right valueless things, things which owe their power only to compact, i.e., to a fundamentally arbitrary if very [widespread][xxi] convention. I think it is impossible to understand this chapter on property if one does not have clearly in front of oneself a beginning and an end of an argument. The beginning of the argument is the traditional notion of the rights and duties regarding property, i.e., limited acquisition and limited use; e.g., there is a proper use: giving to the poor, liberality as distinguished from mere ostentation and the playboy's way of spending money. At the other pole we find unlimited acquisition and no moral distinction regarding use. Now Locke moves in this chapter in strange ways from the traditional notion to the modern notion, and that, I think, is demonstrable. Now the difficulty is to see *how* he moves from one to the other. That is extremely subtle, and we certainly have not yet succeeded in following fully all the windings of the argument. But the important part to begin with is, in the first place, labor is the title to property, the only original title to property. And that means, of course, the source of property—that is, the *thing* which will be maintained—is in the individual. Property is not, to put it bluntly, a social institution. Property has its[31] [rise] in the individual, and society must somehow live with that and regulate it to some extent. But primarily it belongs to the individual.

Secondly, and here I can only repeat what I said before, there is a shift from the theme "labor is the only title to property," to the thesis "labor is the origin of all value," which is an entirely different proposition, because the latter does not imply that *you* must have acquired the things with your own hands. You can have servants do that; that does not affect the right at all. But "labor is the origin of all value" means of course also [that] without labor prior to the curse, in biblical language, in the state of Eden, there must have been extreme penury: only the almost worthless materials. Locke refers to that incidentally later, if I make take this up, in paragraph 42 when, in order "to make this a little clearer," namely, that almost everything owes its value to human work, he says:

"To make this a little clearer, let us but trace some of the ordinary provisions of life through their several progresses before they come to our use and see how much of their value they receive from human industry. Bread, wine, and cloth are things of daily use and great plenty; yet, notwithstanding, acorns, water, and leaves, or skins must be our bread, drink, and clothing, did not labour furnish us with these more useful commodities; for whatever bread is more worth than acorns, wine than water, and cloth or silk than leaves, skins, or moss, that is wholly owing to labour and industry—"[xxii]

Now if you would look at that and read the biblical history in the light of this distinction, you would see that leaves rather than clothes were the clothing of Adam and Eve, and wine came up

[xxi] In the original transcript: "inaudible."
[xxii] *Second Treatise*, sec. 42.

in the story of Noah after the Flood. And of course there is Locke's addition: acorns. Acorns, water, and leaves would be characteristic of the early state, and wine, etc., of the later. So original penury, and not original plenty. That is the crucial part of the argument.

Student: What is Locke's concept of the origin of man? Did he see man as the product of evolution?

LS: That is, I'm sure, not the case. That is one of the greatest difficulties. I have asked some very knowledgeable people what was really the way in which people who did not accept the biblical teaching conceived in the seventeenth century of the origin of mankind. Now in studying Hobbes the last time, I came to the conclusion—but this is very tentative—that Locke believed in the eternity of the visible universe. That would mean, of course, the question of the origins cannot arise. In Spinoza I remember a remark which also suggested the same thing.

Student: . . .

LS: Yes, but of course not in the Aristotelian way. What I regard as possible is this: that what I call a decayed Aristotelianism played a certain role for the cosmology of modern man, more than one thinks. But that is extremely tenuous, because when Hobbes speaks about the subject he uses biblical language. But then he does this in such a manifest way. He says we have to believe the story of Moses. Then we know in the case of Hobbes that he does not really believe that, that he means something else. But of course you must not forget that there was always something else apart from . . . As far as my knowledge goes, the first to suggest something like evolution—evolution means, of course, of species out of species—was Diderot, the French writer of the mid-eighteenth century, from whom Rousseau took over certain suggestions along this line in his *Discourse on the Origin of Inequality*.[xxiii] I am not aware of any . . . Of course, if you take such a scheme[32] [as] that of Descartes as sketched in the *Discourse on Method*—you know, a mechanical model by which the universe came into being—this implies the necessity of a natural genesis of man; I mean, a genesis of man not due to special creation. But I do not believe that Descartes made any indication of how the genesis of man could be understood in mechanical terms. That came later, much later. But there was of course a way in which it could be done, at least at first glance, and that was the Epicurean way: the old story which everyone knew in Lucretius's poem, the fifth book, where this is developed, and which has a certain similarity to evolution. But it is really not evolution at all, because there is no evolution of species out of species. In the original state of the world—of the earth, to put it more precisely—nature produced all kinds of fantastic combinations which were not able to live, and then all other kinds came out, as it were tried, and only those which were capable to survive survived, and these are the species which we know.[xxiv] But there is not evolution of the present species from earlier species. So man came into being at the beginning as did all other species . . . This was doubtless[33] known to everyone at that time, and how far it was accepted is very hard to say—the

[xxiii] Strauss probably has in mind Diderot's *Lettre sur les aveugles à l'usage de ceux qui voient* (1749). A recent translation of this letter into English is available in Kate E. Tunstall's *Blindness and Enlightenment: An Essay* (London: Bloomsbury Academic), 2011.
[xxiv] Lucretius, *De rerum natura* 5.837-877.

evolutionary doctrines, of course, since the nineteenth century, not long before Darwin, Lamarck.[xxv]

Student: . . .

LS: You mean that all he eats is nuts and apples.

Student: . . .

LS: Sure, man is a beast capable of calculating. And therefore I refer again to the observation in today's report—which is still, I believe, the best I have heard, although I have not checked on it—namely, that only man is[34] [able] to be radically selfish, because in the case of the other animals, the social instinct, i.e., the preservation of the young and this kind of thing, overrides the desire for self-preservation. Man alone is capable to calculate that in a situation of famine, if his present brood perishes, he can produce a new brood afterward. You know, this calculation is beyond that of any beast. Man is capable of that. Surely I think that is perfectly correct to say, and only slightly and thinly disguised by traditional language.

Student: . . . but man is created in the image of God.

LS: But there is nothing of that. You have seen that. When he refers to the biblical verse, he omits the passage about the image of God and quotes only, "Whoso sheddeth man's blood, by man shall his blood be shed,"[35] and he says criminals can be terminated like other noxious creatures, like lions, tigers, and wolves, without any reference whatever to the fact they are human beings.[xxvi] Surely, that is no question. But it is not completely visible in every page, what he says, because Locke uses as much as he can traditional language. But that he is driving at what you say, I'm sure.

Student: . . .

LS: Well, that is extremely easy. There is no such natural law except rules derivative from man's right to self-preservation. It is extremely easy. I mean, man cannot preserve himself if he does not kill animals. I mean, if you take away . . . he would in most cases admit that you can kill lice and bugs. I mean, that is easy; I see no difficulty in that. But you could rather say: Why no limitations regarding cannibalism? That would be a more pertinent question. I don't see how Locke can make objections to cannibalism during periods of extreme famine. I think he would say cannibalism is impossible as a general principle, because the constant fear of everyone being eaten by his neighbor would make society and hence comfortable self-preservation altogether impossible. Locke would say that comfortable self-preservation is not possible without society, and therefore there must be an atmosphere of trust among human beings. And this means of course [that] murder, and especially murder for cannibalistic purposes, is out of the question. This is all very funny, but you have to think that out if you want to get it clear. No matter how funny it may seem, it is necessary from every point of view to go into possibilities which are of no practical importance but which for theoretical clarification have to be gone through.

[xxv] Jean-Baptiste Lamarck (1744-1829) a French naturalist who formulated an early theory of evolution.
[xxvi] *Second Treatise*, sec. 11.

Student: . . .

LS: Are you by any chance referring to the fragment . . . Well, whether that has much to do with this point I wonder, but we cannot go into that.

Student: If the earlier question, which suggested that Locke appears to be viewing man as a . . . squirrel has any foundation, I don't quite understand the grounds on which you disposed of the right of brutes to self-preservation—on the ground that because they lack reason, they had no recognition of the contrary of right, that is, of wrong. Because it is not evident to me how the savage in the forest, the Indian, or even any man who did not have Locke's recognition of the law of nature in these terms could be endowed with a reason which could differentiate.

LS: But Locke would still say, I believe, and as a matter of fact he says here in the *Essays* which we read, that all men, even the most savage, do make some distinction between right and wrong. They may draw the line in an atrocious way, but man, by the mere fact that he can see possibilities, can see alternatives, is compelled somehow to draw lines.

Student: But how would this distinguish him in the specific regard of the right to self-preservation? Because if a man's rights distinguish him from a beast there, I should think that . . . would have to recognize that right. But apparently Locke . . .

LS: No,[36] the need for self-preservation is universal. The right to self-preservation, as distinguished from the mere need, requires awareness of the possibility, for example, that some things are needed for self-preservation, also some not. An awareness of that. This awareness, as awareness, is absent from the brutes. The brutes have no alternatives. Man has alternatives. And therefore, thinking of the alternatives, man sees that he can eat brutes and brutes can eat him. And from this point of view the brutes have as much right to eat man as man has to eat the brutes. But man is so powerful and so intelligent that he can easily take care of the brutes, and in addition, since he does not have to live with these brutes, these savage brutes, these beasts of prey, he can exterminate them as he sees fit, whereas in the case of man that is absolutely impossible, because if it were possible for man to kill man for his mere convenience, society becomes impossible. I see no difficulty in that.

But as for your remark, you can address the same question to Lord Bertrand Russell, and not only to him.[xxvii] If I am not mistaken, the common teaching today in the social sciences is that there is no essential difference between man and brute. How do they say it? Man is the animal which uses verbal symbols, because that we do not find in any brute. But that is about all, and that has infinite consequences, that man can use these verbal symbols. But a reflection on the root of that capacity of elaborating and using verbal symbols—formerly, that was called reason, you know—is not made, and therefore no conclusions can be drawn for man's fundamental rationality, but only the behavioristically demonstrative sign that man uses verbal symbols. That is the last thing I have heard. There are always some revolutionary changes taking place in this, but when you look at them they are microscopic and do not affect the issue at all. So that is today

[xxvii] Bertrand Russell (1872-1970), British philosopher, mathematician, and logician, also known for his outspoken views on social and political issues.

the common view. Stated in a language which is not social science: man is distinguished from the other animals by a much greater capacity to calculate. That is all, no moral . . . and this calculation includes then, among other things, that men for the sake of living socially establish values. But these values have no status beyond the human establishment: they are only arbitrary. And the root of that is[37] calculation. You can call this "verbal symbols," but it amounts to the same thing, because any calculation which is a bit more complicated than that of a monkey—you know, in these experiments they learn, as they say, monkeys learn . . . and therefore the calculation is very simple and can be effected by very small children.

Student: I was wondering about the meaning of Locke's statement about the value of gold and silver. Is it just merely that we can't eat it?

LS: Yes, they are useless for self-preservation in the state of nature. They are by nature useless for self-preservation. They become useful for self-preservation by virtue of a compact or a convention. And this compact is made—and you can read with some help here Aristotle's analysis of why men introduce barter and then money. Locke was not aware of that . . . but it is of course implied. Locke sees only the conclusion that in the moment money is established, people become much more avaricious. They have a much greater desire for accumulation and also a greater opportunity for it than they had before. He gives the example of people who are . . . houses, cattle, and God knows what, and yet in the moment money appears, the whole beauty of this idyllic and comfortable society collapses . . . I don't see it is necessary, but he contends that. Whether people could live comfortably and yet within very moderate limits without being greedy . . .

Student: I was wondering whether the point he is trying to make is that people in the state of nature would have as good a reason to collect gold and silver as pebbles, and therefore that actually no one in the state of nature collected them, or whether he is saying that the people did collect gold and silver, these people would want to collect pebbles.

LS: Childish things, sure. Childish things and perfectly innocent enjoyment—of course, utterly valueless.

Student: If gold and silver were desired—I mean, in a sense it would be valueless since it had no value for eating, but in the sense of its being prized by the person who possesses it.

LS: Well, that could be, but that would be irrelevant. What Locke, I think, clearly implies is that as long as money—gold and silver, rather, not money—is not considered as a means of exchange, it is absolutely uninteresting. Is this not correct? I mean, if money does not become the thing around which everything turns, and that would not be the case as long as it is merely admired because of its splendor. Is this not it?

Student: Once you start to trade with it, then it becomes transformed. When you are willing to give up some nuts or apples for some pebbles, then it becomes transformed.

LS: Already it is this in the original state of merely childish attraction. I do not know, but I submit to you that what Locke implies is really that he means not only barter with gold and

silver, but that gold and silver become *the* foundation of all exchange. That is my impression, but I am really open . . .

Student: . . .

LS: Yes, but this . . . might well be [a] mere transitional thing which itself does not fundamentally alter the problem of right, affect the problem of right. The observation that gold is splendid, that it is extremely durable, of course antedates the use of money as a means of exchange. But only by becoming *the* means of exchange might the legal situation be affected. That is my question.

Student: I'm not sure about having solved the problem of the labor theory of value. Were you asserting that when money comes into use, then the labor theory of value is dropped?

LS: No, on the contrary, labor remains the origin of value, which is perhaps something different from the labor theory of value. Labor is the origin of value; that is emphatically the thesis of Locke until the end of the argument. And the question which was raised last time by Mr. Cropsey regarding Times Square, the lots of uncultivated land lying in Times Square, this has an infinite value without being cultivated. That Locke would have said this really doesn't do away with the fact . . . is ultimately due to the labor-originated value of the given surroundings.

Student: I was really curious about how you would answer Mr. Cropsey's argument in detail, but I notice one or two passages which I thought might suggest what he was getting at. I was thinking of the end of paragraph 43, where he says of calculating the labor value: "all which it would be almost impossible, at least too long, to reckon up."

LS: Sure, that is clear. Of course it is not impossible if someone takes the trouble to enumerate all these manufacturing and other acts which brought it about, [if that] could be done. But it would be almost impossible . . . But it would certainly be too long . . .

Student: Mr. Cropsey made the point that he thought Locke ended up with a position where value was determined simply comparing quantity with quantity without any reference to the labor which went into it.

LS: I see. But that would not do away with the fact, I think—with the thesis which he has here in mind that it is essentially human productivity which is the cause of wealth and not nature. Essentially. And that, I think, is the main point with which he is here concerned.

Student: Where do we fit the Incas of Peru into Locke's whole scheme? Would they be in the state of nature, regarded as savages of some kind? He mentions them in the *First Treatise*, and they were also known to have a lot of gold . . .

LS: I do not remember now enough of the Incas. I read Prescott's book a few years ago, and I am inclined to believe that the judgment of Prescott would not be too different from that of

Locke.[xxviii] That it was a very charming people, a nice people, but of course they were defeated because of . . .

Student: Then he would not consider them as savages.

LS: No.

Student: . . .

LS: Well, that is a very interesting question. But to what extent did they use gold and silver as money?

Student: I don't know whether they had money, but I don't think they used it as coin. They used it for what the savages used nuts for, in the sense that it was worth something.

LS: I see. That would be the stage to which Mr. — refers. That it is valued but not yet a means of exchange. That would need to be gone into. I cannot say more.

Student: In regard to the problem of whether the labor theory of value is in any way contradicted by saying supply and demand theory of value, I think it is contradicted because of this assumption at the very beginning. There are in effect . . . there is no limit on supply . . .

LS: Well, I cannot say much about it. I simply hope that Mr. Cropsey will do that in the course of his study: how far the economic doctrines are visible or underlying somehow the merely moral or political doctrine regarding property we have here. But the main and crucial point is this: what he wants to do here with labor. Not natural plenty, not nature as a kind mother providing for man, but natural penury: man owes his well-being, his comfortable self-preservation, entirely to his own efforts. There is a passage in this neighborhood, I think in paragraph 43, which is based on a section in Cicero's *Offices*,[xxix] and it is interesting to see [that whereas Cicero uses this argument][xxx] to show how much man is in need of his fellow men; thus the sociality of man. Locke uses this in order to show that the origin of all value is labor, and this taken in connection with the main thesis of the study: regarding the individual as the source of property.

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[1] Deleted "knowing."
[2] Deleted "but." Moved "also we."
[3] Deleted "also."
[4] Deleted "chapter."
[5] Deleted "That."
[6] Deleted "i.e."
[7] Deleted "since."
[8] Deleted "which."
[9] Deleted "at parts."
[10] Deleted "what."
[11] Deleted "as."

[xxviii] W. H. Prescott, *History of the Conquest of Peru* (Philadelphia: J.B. Lippincott, 1847).
[xxix] Cicero, *De officiis* 2.3-4, sections 12-14. See Strauss, *Natural Right and History*, 237n.
[xxx] In the original transcript: "inaudible"; words in square brackets have been supplied by the editor.

[12] Deleted “so-and-so.”
[13] Deleted “which.”
[14] Deleted “Hobbes.”
[15] Deleted “of.”
[16] Deleted “five.”
[17] Deleted (page 134 bottom, 135 top).”
[18] Deleted “if.”
[19] Moved “also.”
[20] Deleted “(sec 111 0 2).”
[21] Deleted “their.”
[22] Moved “there are two.”
[23] Deleted “it.”
[24] Deleted “as.”
[25] Deleted “an.”
[26] Moved “as a slave.”
[27] Deleted “His.”
[28] Deleted “in.”
[29] Deleted “as if.”
[30] Deleted “does.”
[31] Deleted “use.”
[32] Deleted “like.”
[33] Deleted “was of course.”
[34] Deleted “capable.”
[35] Deleted “(p. 126, paragraph 11).”
[36] Deleted “the right to self-preservation is.”
[37] Deleted “the.”

On Locke's Second Treatise,
Session 12: February 26, 1958

Leo Strauss: You stated very clearly the teaching of Locke[i] regarding the natural law relations between parents and children, what you said on the first two pages particularly. One gets the impression from that as well as from Locke himself, that regarding this relation, Locke's teaching is fundamentally the traditional teaching. And then you went beyond that and raised certain doubts whether Locke is really so fully in agreement with the traditional teaching. But at this point you did not push through sufficiently, through [to] the consequences. Well, the problem is this. We have read the chapter on property, and this chapter on property is characterized by its radically novel or revolutionary character: no limits to acquisition, no limits to the use of property—a complete break with the traditional view. Of course, theoretically it is possible that such a man might still have held the traditional view regarding parents and children. But, as you are well aware, if[1] self-preservation takes on this radical importance, which it takes on in Locke, this is bound to affect the parent–children relation as well. But, as I said, this argument as presented by you was not a clear one. You made certain observations, but they were not sufficiently discussed. I do not say that anyone else could have done it better, or even that I might, but I still can easily see the difficulty.

Now to show you the difficulty in the most simple way, Locke makes a clear distinction between obedience due to parents by young children, say, roughly twenty-one and younger, and only honor and not obedience if they are twenty-one years of age or older. I suggest we look at page 155, paragraph 71.

Reader:
But these two powers, political and paternal, are so perfectly distinct and separate, are built upon so different foundations, and given to so different ends, that every subject that is a father has as much paternal power over his children as the prince has over his, and every prince that has parents owes them as much filial duty and obedience as the meanest of his subjects do theirs—[ii]

LS: You see, "filial duty and obedience." Here Locke questions the simple distinction between obedience and honor, because this prince is of course a grown-up man, and still he owes obedience. In other words, Locke indicates here—if it is not a mere slip of the pen—that the distinction between obedience and honor cannot be so easily drawn as he presupposed before. I don't draw any further conclusion from that except a kind of warning that we have to reconsider the argument. The point which you stated, and which I think is absolutely on the right way, is that the relation becomes contractual and no longer natural. So there is a contractual relation, certainly, between the grown-up children and their parents, but there is also some kind of tacit contract implied in the relation between the children and their parents. That is Hobbes's way of construing the family relation: every obedience rests on some form of contract, and there is a tacit agreement between the children and the parents.

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[i] Strauss responds to a student's paper, read at the beginning of the session. The reading was not recorded.
[ii] *Second Treatise*, sec. 71.

But here a great difficulty arises: What is the condition of contract, the most obvious condition?

Student: Consent.

LS: Sure, consent. But still, that that consent is genuine consent and not a mere sham. But there is something else presupposed.

Student: Reason.

LS: Sure, because a baby of two years could be said to have consented, but that would never be regarded as a genuine consent. So, reason. Now reason is also the condition for something which is much more in the foreground of the discussion in this chapter. Locke says a lot about reason as a condition of something. A condition of what?

Student: Freedom.

LS: And in his terms? Well, that is one of these silly teacher's devices: you know the answer, and you put it and expect everyone to know what you are about. But still, every man is under the law of nature, and therefore he is free. But is this true of every human being unqualified[ly]?

Student: No.

LS: All right, what is the crucial qualification?

Student: . . .

LS: Yes, but point to the type of men who are not free because they cannot be subject to the law of nature, lacking reason.

Student: Children.

LS: Well, let us take care of the children . . . So the children are not subject to the law of nature. How then can they be under a natural obligation to obey their parents?

Student: Perhaps it is not so much an obligation as a privilege.

LS: Well, that may be. He puts it this way. They are on the receiving end: they get the candies and other things. But, on the other hand, they have to obey. How can they be under an obligation to obey, under an obligation of the law of reason to obey, if they lack reason?

Student: Is it that they are under no obligation but that it depends simply on the power, the coercive power of the parents?

LS: That would lead to a terrible danger if this should give. So you see, then it would of course be something entirely different from a legal situation. That is a difficulty.

Before we turn to the details I suggest a brief reflection on the plan of the chapter. In this case I believe the plan is clear. [In] the first (paragraphs 52 to 53), he says that it is not paternal

power but parental power, because the mother is as important in the relation as the father. That is very important for the understanding of the chapter, because Locke does later on very strange things. He drops the mother in very arbitrary ways from time to time. Then the next large section (paragraphs 54 to 65), the subjection of children to parents,[2] the power of parents over their children, is only temporary and only for the children's good. Next section (paragraphs 66 to 71), the duty of grown-up children to their parents, and that consists of honor as distinguished from obedience. [Next], (paragraphs 72 to 73), the power of parents over grown-up children is entirely nonnatural. The power, the jurisdictional power as distinguished from the mere claim to honor, is entirely nonnatural—or, as was pointed out in the report, entirely nonnatural but contractual. Then the last section (paragraphs 74 to 76), how it comes that paternal power is mistaken for political power. Locke explains that in the beginnings, the fathers or grandfathers very naturally became the kings. But this is not derivative, as he emphasizes, from the paternal power but implies a radical change in the character of power. This much for the plan.

Perhaps we turn now first to a discussion of special passages in order then to try to have a summary at the end of our discussion. Now let us look first at the beginning. Let us read the beginning of the chapter, which is quite important.

Reader:
It may perhaps be censured as an impertinent criticism, in a discourse of this nature, to find fault with words and names that have obtained in the world—[iii]

LS: Let us stop for one moment. By this remark Locke gives us some indication as to the character of this discourse. He says "in a discourse of this nature." Question: In what discourses is it not impertinent to find fault with words and names that have obtained in the world? How would you call such a discourse in which you deviate from habitual forms of expression and introduce new terms, or in which you would use old terms in a different sense? In what kinds of discourses . . . Philosophic or scientific works, clearly. So that is an indication of the nonscientific character of the work. That you have to take together with other terms which Locke uses from time to time; for example, when he speaks of "we." In scholarly works, scientific or philosophic works, people use the first person plural—which some people find affected, you know, because the simple practice is to say "I"—and say "we have shown" or "we have seen." Who are the "we," in the first place? Who are the "we" when it is said, "we have shown in a certain chapter that a is b"? He means of course primarily himself, but he thinks also modestly of himself as a part of an association, of a group. What is that group?

Student: The holders of that position.

LS: No, that is also too modest. The community of scholars, the community of people who can argue and think properly. Good. When Locke uses the "we," he very frequently (I do not have [an exact count][iv]) means "we English." This is really primarily not a scientific work but a work by an Englishman addressed to Englishmen. Naturally, the subject matter is of such a universal kind that it is not merely a pamphlet by a British citizen in a given situation or supporting a given measure, but it contains a universal truth . . . by this British or English preoccupation. That is not altogether unimportant.

[iii] *Second Treatise*, sec. 52.
[iv] In the original transcript "inaudible."

Now let us see.[3] The point he makes here: if he[v] wants to use proper language, he should speak of parental power and not of paternal power because, as he put it, "if we consult reason or revelation, we shall find she [namely, the mother—LS] hath an equal title." Will you read the following sentence?

Reader:
This may give one reason to ask whether this might not be more properly called "parental power," for whatever obligation nature and the right of generation lays on children, it must certainly bind them equally to both the concurrent causes of it. And accordingly we see the positive law of God everywhere joins them together without distinction when it commands the obedience of children: "Honour thy father and thy mother" (Exod. xx. 12)—[vi]

LS: So Locke[4] here[5] says that reason or revelation both grant the power to both father and mother. And then he speaks of revelation, later on calling it now the positive law of God . . . and he proves that by four biblical quotations, three from the Old and one from the New Testament. Now what about reason? You see he replaces reason here by "nature and the right of generation." What is the relation of these two, nature and the right of generation? Are they identical or are they different? Locke indicates here a problem which was discussed in today's paper. But what did he say in the *First Treatise* about the right of parents?

Student: From begetting.

LS: Yes. In paragraph 18 (which is on page 19 of this edition) he quotes from Filmer, from Grotius: by generation a right is acquired to the parents over their children. And he never questions that in the *First Treatise*, that the mere begetting is the ground of that right. But here he speaks also of nature and the right of generation. And in the light of the later . . . we can say he indicates here for the first time very clearly that the right of generation is perhaps not so important as another thing which is indicated by nature. At any rate, our attention is drawn to the problem of a right merely based on generation. Is a right acquired by generation, a genuine natural right?

So father and mother are equally important. That is the first point which he mentions. That has perhaps something to do with another problem which we have come across in the section on property, especially in paragraphs 28 and 29, where Locke speaks of the plenty which God has given to man and also of nature as the common mother of all. It is not impossible that Locke thinks also of this broader or deeper problem. Is not ultimately metaphysically, not merely morally and politically, the mother also to be considered? Does this make any sense? Well, the biblical tradition finds the highest cause in God. And God is of course understood [in terms of][vii] the father and mother distinction here, as the father. What could be a mother in this perspective? That was the symbolism used in the [Bible].[viii] Yes, but nature understood in a specific way, because nature as we see it would be partly the work of God himself.

Student: Matter.

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[v] That is, Filmer.
[vi] *Second Treatise*, sec. 52. In the original transcript, the passage begins "which."
[vii] In the original transcript: "inaudible"; words in square brackets have been supplied by the editor.
[viii] In the original transcript: "inaudible"; word in square brackets has been supplied by the editor.

LS: Matter. And[6] the word in Latin (*materias*) reminds us at least, although I do not know the exact etymology, of *mater*, but that is ultimately unimportant. In other words, the great problem is this, of a metaphysical dualism which admits an active and a passive principle (to use Aristotelian language) as coeval. A contemporary of Locke with whom Locke had some dealings, Pierre Bayle,[ix] a French Huguenot, had developed a doctrine according to which natural reason by itself leads necessarily to such a fundamental dualism which he called Manicheism. Manicheism was a kind of late-classical heresy which asserted that there are two principles, a good and an evil principle, but that is ultimately, of course, the Aristotelian position if you go back behind this strange religion of Manicheism. Only Bayle said revelation teaches the opposite, and you have, of course, to believe in revelation. But that meant in Bayle's context that revelation is in its teaching absolutely against reason because reason itself teaches that dualism. And it is left to every reader to [determine][x] whether Bayle himself followed reason or revelation. That is a long question into which I cannot go.

So this problem may very well be present here, and there are some reasons for assuming its presence. I mention now only one point. In the early essays of Locke on the law of nature, when he demonstrates the existence of God in one of the essays, he never applies the term "omnipotent" to God there, although it is a term which he uses in other essays. Now omnipotence of course is incompatible with the coexistence of[7] [matter], whereas very great power is.[xi] But let us leave it at that. It may not be unimportant for the understanding of some passages which follow.

Now he develops this theme of the equality of father and mother more fully in the next paragraph, and then in paragraph 54 he makes a point which is of crucial importance for the understanding of Locke, namely, equality. Can you read the beginning of paragraph 54?

Reader:
Though I have said above (Chap. II) that "all men by nature are equal," I cannot be supposed to understand all sorts of equality. Age or virtue may give men a just precedency; excellency of parts and merit may place others above the common level; birth may subject some, and alliance or benefits others, to pay an observance to those whom nature, gratitude, or other respects may have made it due—[xii]

LS: Let us stop here. You see he mentions here nature, and when he speaks of "excellency of parts" he means of course also excellency of natural gifts. So there is a form of natural inequality which Locke is very far from denying, of which he does not deny altogether that they are politically relevant, as we shall see later. But they are irrelevant as regards the fundamental consideration, the fundamental consideration being self-preservation. As regards the need for self-preservation and the urgency for that, there is no difference among men; and therefore fundamentally men are equal. This remark serves here to introduce the thought that in spite of the fundamental equality, there are certain important inequalities which justify something like the rule of men over others. The most important example is that of children. So you see the first word of the next paragraph is "children." Children are "not born in this state of equality, though they are born to it." Now read the sequel.

Reader:

[ix] See session 4, n. xxv.
[x] In the original transcript: "inaudible"; word in square brackets has been supplied by the editor.
[xi] Compatible, that is.
[xii] *Second Treatise*, sec. 54.

Their parents have a sort of rule and jurisdiction over them when they come into the world, and for some time after, but it is but a temporary one. The bonds of this subjection are like the swaddling clothes they are wrapt up in and supported by in the weakness of their infancy; age and reason, as they grow up, loosen them, till at length they drop quite off and leave a man at his own free disposal.[xiii]

LS: Is there not something . . . harsh in this sentence, or almost . . . harsh? He spoke of children throughout, didn't he? Then suddenly he speaks about a man. What[8] about girls? Do they never become reasonable? That is quite remarkable. Why does he suddenly turn only to males? Now let us see the next paragraph.

Reader:
Adam was created a perfect man, his body and mind in full possession of their strength and reason, and so was capable from the first instance of his being to provide for his own support and preservation and govern his actions according to the dictates of the law of reason which God had implanted in him.[xiv]

LS: You see Locke uses here not completely, but substantially traditional language. I do not want to go into that long question [of] what precisely the status of Adam was after his creation. Locke takes one special view, which has been defended by some theologians, and uses also the term, the law of nature was "implanted in him." Now if it is implanted in Adam, one would expect that it is implanted in every human being, and therefore that it would already be effective to some extent in children. Not necessarily in very small babies, but as soon as they are six or seven years old, there could already be observed signs of this implanted understanding. Locke rejects this notion of an implanted law of nature completely, as is clear from the *Essay Concerning Human Understanding*. But it will also appear from this writing. Now let us see how he goes on. So it seems that the emphasis on a man may have something to do with Adam. What about Eve? Let us read the sequel.

Reader:
From him the world is peopled with his descendants—

LS: You see, his descendants, but [not][xv] the descendants of Eve. So—

Reader:
who are all born infants, weak and helpless, without knowledge or understanding; but to supply the defects of this imperfect state till the improvement of growth and age hath removed them, Adam and Eve, and after them all parents, were, by the law of Nature, "under an obligation to preserve, nourish, and educate the children" they had begotten—[xvi]

LS: We don't need the next sentence, but read the beginning of the next paragraph.

Reader:
The law that was to govern Adam was the same that was to govern all his posterity—the law of reason. But his offspring having—[xvii]

[xiii] *Second Treatise*, sec. 55.
[xiv] *Second Treatise*, sec. 56.
[xv] In the original transcript: "inaudible."
[xvi] *Second Treatise*, sec. 56.
[xvii] *Second Treatise*, sec. 57.

LS: "His offspring," and later on also "Adam's children." You see, after he has introduced for one moment Eve, he drops her again. That is very strange, and especially since the chapter has begun with such an emphasis on the mother. Then he uses such an expression as "the world peopled with *Adam's* descendants," whereas obviously they must have been Eve's descendants as well. Now what can he possibly mean by that?

Student: Here he is talking about the duties incumbent on Adam and Eve and in the other places it is a different connection.

LS: But why does he make this [firm][xviii] distinction between the males and females here, whereas he tried to fight it in the very beginning of this chapter? I mean, he will speak of the difference between the two sexes as it affects natural law in the next chapter, but here it is not the theme. Well, what is the biblical account of Adam and Eve and of their status?

Student: Eve was created out of his rib.

LS: Well, at any rate, she is later according to the biblical account. Why could Locke wish to draw our attention to this fact in this strange way? Could it be of some importance? Don't forget the beginning of this chapter: the equality of father and mother versus the common view according to which that power is called paternal and not parental power. Could Locke not have had in mind the fact that the Bible to a considerable extent supports this emphasis on the power of the father as distinguished from the mother by ascribing to Eve this derivative character? And that could very well be connected with this broader metaphysical issue to which I referred before. But it is certainly very strange, especially after you have been imbued with this principle: father and mother are equal. Then to have the emphasis on Adam, *his* descendants peopling the world, and so on. Eve is then mentioned in between, but then a return to Adam and *his* offspring. It runs absolutely counter to the principle laid down so emphatically at the beginning of the chapter.

Locke then speaks in the sequel (paragraph 56) of the natural law obligation of the parents "to preserve, nourish, and educate the children," and then in paragraph 57 that the parents are under a duty to take care of their children. The children are on the receiving end. They have a right to be taken care of by the parents. But the question is this. Since children are not under the law—he says explicitly in line 5 of paragraph 57 that Adam's offspring are not "presently under that law," even if Adam is—the question arises: When do children come under that law of nature? According to the only explicit remark of Locke on this subject: when they are about twenty-one. Then they are grown up. And then this leads to the question I mentioned before: Can children be under the law of nature? This is answered in the negative by Locke, but how then can the children be under an obligation to obey their parents? Now if this is impossible, the question of filial obedience must be answered in different terms. Why do children obey their parents, then?

Student: . . .

LS: But look at it without any sophistication. The crudest answer would perhaps be the best for our understanding.

[xviii] In the original transcript: "inaudible."

Student: . . .

LS: Yes, they can't help it. In other words, we would here have one case of a law of nature which cannot be transgressed. Whereas the traditional understanding is that children are under a moral obligation to obey their parents, an obligation they can very well transgress because it is a moral obligation, there is here a suggestion of a law of nature they cannot help [but obey].[xix] What about naughty children who disobey their parents? What does Locke say about them?

Student: They must be punished.

LS: They will be punished—not now, but in former ages. The effective parental power is sufficient, [for][xx] either the children fear that power and are nice to begin with, or if they are not nice, they will be brought back to obedience by the strong arm of their father—stronger than their arm, at any rate.

Student: . . .

LS: He takes up the question of when do people become free of the law of nature, and then he says it is the same question as when do people become free of the law of England . . . age of twenty-one, and that follows from Locke's statement.[xxi] So he says that gives you a rough idea, maybe nineteen, it doesn't make any difference. But the crucial point is that children, [when they do not have developed reason],[xxii] they are under an obligation to obey their parents. If they have [developed reason],[xxiii] they are no longer under an obligation. Thus the question of filial obedience is identical with the status of the law of nature commanding filial obedience. The law of nature commanding filial obedience is addressed to people below the age of reason; hence it doesn't find addressees, because they do not have reason, and hence it cannot be a law. That is, I think, what Locke means. The law of filial obedience does not address grown-up children who could [obey it].[xxiv] That, I think, is the dilemma with which Locke [deals].[xxv] And that of course has to do with this crucial fact: If the law of nature is not implanted or imprinted on the human mind, then it can be truly known only through demonstration. All other awareness of the natural law is not awareness of the natural law. It is an awareness of certain rules which do not have the status of natural law but the status of social prejudices. If this is so, much more follows: that only philosophical [persons][xxvi] can be the subject of natural law. That is the ultimate conclusion, but we are dealing here only with the more limited question of children.

And therefore the question which arises then is: What about the parents? The parents are old enough to understand the law of nature; they therefore should be able to understand that they are under an obligation to bring up their children. There would seem to be no problem . . . But whether that is so we must see.

[xix] In the original transcript: "inaudible." .
[xx] In the original transcript: "inaudible."
[xxi] Strauss must mean "subject to," not "free of."
[xxii] In the original transcript: "inaudible."
[xxiii] In the original transcript: "inaudible."
[xxiv] In the original transcript: "inaudible."
[xxv] The transcript has ellipses here.
[xxvi] In the original transcript: "inaudible."

Now in paragraph 57 there is the famous remark of Locke on freedom. Freedom does not consist in doing what one lists, but in what?

Reader:
For liberty is to be free from restraint and violence from others, which cannot be where there is not law; but freedom is not, as we are told: a liberty for every man to do what he lists—for who could be free, when every other man's humour might domineer over him? —but a liberty to dispose and order as he lists his person, actions, possessions, and his whole property, within the allowance of those laws under which he is, and therein not to be subject to the arbitrary will of another, but freely follow his own.[xxvii]

LS: Liberty, then, can be only liberty under law. What kind of law is not specified, but there must be some law restraining the arbitrary will of others if there is to be any liberty. Now here is also a strange thing: "his person, actions, possessions, and his whole property." What is his property, different from his possessions? What would you think? A different enumeration, but much more reasonable, occurs in the first paragraph of part 4,[xxviii] page 122, where he speaks of "perfect freedom to order their actions and dispose of their possessions and persons as they think fit, within the bounds of the law of nature," but here he makes this strange distinction between possession and his whole property. That is a problem which one would have to consider. What could it possibly be? I do not know, but I am sure it could be clarified if one would go through the whole treatise and look up these enumerations, and then you would find, I think, somewhere the solution.

Student: In other words, it would seem that according to this, law is not only freedom *from* but freedom *for*; fulfilling himself.

LS: Yes. He says more specifically, "prescribes no farther than the general good of those under that law."[xxix] But what about this understanding of freedom? That is the traditional understanding of freedom. Locke will take up the question of freedom in an entirely different sense later on in this chapter. Here he speaks of freedom in a traditional sense. Now let us come to paragraph 58 and then we see the context.

Reader:
The power, then, that parents have over their children arises from that duty which is incumbent on them—to take care of their offspring during the imperfect state of childhood. To inform the mind and govern the actions of their yet ignorant nonage till reason shall take its place and ease them of that trouble is what the children want and the parents are bound to; for God, having given man an understanding to direct his actions, has allowed him a freedom of will and liberty of acting as properly belonging thereunto, within the bounds of that law he is under. But whilst he is in an estate wherein he has not understanding of his own to direct his will, he is not to have any will of his own to follow; he that understands for him must will for him too; he must prescribe to his will and regulate his actions; but when he comes to the estate that made his father a freeman, the son is a freeman too.[xxx]

LS: Yes. On the whole, and especially the first part, that is a perfectly ordinary and traditional view of the matter. There is nothing striking. But there is a strange expression

[xxvii] *Second Treatise*, sec. 57.
[xxviii] Strauss means chapter 2, paragraph 4.
[xxix] *Second Treatise*, sec. 57. Locke has "no farther than is for the general good" etc.
[xxx] *Second Treatise*, sec. 58.

here, when he says in the middle of the paragraph, "God has allowed him a freedom of the will and liberty of action." What does freedom of will mean here? You see Locke has spoken of freedom before, and there he had in mind freedom from subjection to other human beings. Is this the same as freedom of will?

Student: [. . .]

LS: The notion that there is a freedom of will and that there is a directedness of the man to virtue, they run together; because while man is by nature directed toward virtue, he may willfully reject the [. . .] I think that is not the difficulty. I believe that you are here misguided by certain [modern][xxxi] doctrines where it is implied that any law of nature and moral law would be incompatible with true freedom. No, that is not the point. Freedom in the sense of freedom from subjection to others is an entirely different problem than freedom of the will. Why?

Student: [. . .]

LS: In other words, a slave. A man may be a slave and have as much freedom of will as the greatest prince. The moral freedom of the will has nothing to do with the question of freedom from the power of other men. The formulation here in the center of paragraph 58 I find strange. Locke is speaking here of the relation of freedom and understanding. Freedom follows understanding. That is perfectly normal [. . .] but the formulation is strange. One would expect "for freedom being dependent on the understanding does not have a place prior to the maturity of understanding," but instead Locke merely says, for man, God has given man a freedom of will. What I think Locke here refers to is the whole problem[xxxii] of the freedom of the will; later on, in paragraph 60, he quotes a passage from Hooker, and if you look it up, that is in the context of Hooker's discussion of the freedom of the will. The freedom of the will has become for Locke a great problem, as you can see from book 2, chapter 21 of the *Essay Concerning Human Understanding.* In a thinly disguised way, Locke proposes there the Hobbean deterministic teaching,[9] which has infinite moral consequences, of course. Therefore Locke, when speaking of freedom in the political or social sense, has also [raised][xxxiii] this problem of freedom of the will which, if not immediately relevant, is of course of great importance for the understanding of morality and therewith of the meaning of political things.

Up to now we have reached this point: that it is a great problem how the children can be under any obligation to obey their parents, an obligation proper as distinguished from a compulsion or desire. But the parents, that's no problem: the parents have reason; therefore they can be under a moral obligation to take care of the children. Now let us see what is going to happen to this duty of the parents. Paragraph 60, after the quotation from Hooker.

Reader:
All which seems no more than that duty which God and nature has laid on man as well as other creatures—to preserve their offspring till they can be able to shift for themselves—and will scarce amount to an instance or proof of parents' regal authority.[xxxiv]

[xxxi] In the original transcript : "inaudible"
[xxxii] In the original transcript: "problem (?)"
[xxxiii] In the original transcript: "inaudible."
[xxxiv] *Second Treatise*, sec. 60.

LS: Yes. You see, there are always these polemical digs at poor Filmer [. . .] But let us not be deceived by that. This duty of the parents is laid on man as well as other creatures. Now who are these other creatures? It can only be beasts. Now if man's duty to take care of his offspring has the same character as beasts' "duty" to preserve their offspring, then it cannot be a natural law obligation; it cannot be an obligation [of duty].[xxxv] The same instinct which is effective in the beasts is also effective in man. That is the first indication of this difficulty.

Perhaps in paragraph 63 we will read the first and the last sentences.

Reader:
The freedom then of man, and liberty of acting according to his own will, is grounded on his having reason which is able to instruct him in that law he is to govern himself by, and make him know how far he is left to the freedom of his own will.[xxxvi]

LS: You see, that is also a strange formulation, "the freedom of his own will." [Now read] the end.

Reader:
God hath made it their business to employ this care on their offspring, and hath placed in them suitable inclinations of tenderness and concern to temper this power, to apply it, as his wisdom designed it, to the children's good as long as they should need to be under it.[xxxvii]

LS: Yes. But the question is whether the same inclination does not apply to brutes as well. For in the traditional Thomistic teaching, there is an essential connection between the inclinations of men and the law of nature as the law of reason. In Locke they are divorced. The law of reason is a kind of geometrical, demonstrable knowledge which starts from certain principles and has in itself no support in the inclinations, whereas here he refers to[xxxviii] the inclinations. Let us see whether this will become a bit clearer. Paragraph 64.

Reader:
But what reason can hence advance this care of the parents due to their offspring into an absolute arbitrary dominion of the father, whose power reaches no farther than, by such a discipline as he finds most effectual, to give such strength and health to their bodies, such vigour and rectitude to their minds, as may best fit his children to be most useful to themselves and others; and, if it be necessary to his condition, to make them work, when they are able, for their own subsistence.[xxxix]

LS: That is again the traditional formulation. The father is under no obligation to make the children work; only if it is necessary to his condition. Only a poor father is under such an obligation. That indicates a great difference between poor and wealthy parents which will become later on very important for Locke's doctrine of natural law. The situation of poor parents' children radically differs, as you have observed, from rich people's children. To anticipate that point, if [. . .] is so important, and if a poor man cannot have invested much money in bringing up his children and a rich parent may, their duty to honor their parents is

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[xxxv] In the original transcript: "inaudible."
[xxxvi] *Second Treatise*, sec. 63.
[xxxvii] *Second Treatise*, sec. 63.
[xxxviii] In the original transcript: "refers to (?)"
[xxxix] *Second Treatise*, sec. 64.

proportional to the wealth of the parents, other things being equal, and that of course is a clear indication of the contractual character. Here we have the first indication of that [point].[xl]

Now in the next paragraph we find some very important points which will clear up the matter. Paragraph 65:

Reader:
Nay, this power so little belongs to the father by any peculiar right of nature, but only as he is guardian of his children, that when he quits his care of them he loses his power over them which goes along with their nourishment and education to which it is inseparably annexed; and it belongs as much to the foster-father of an exposed child as to the natural father of another. So little power does the bare act of begetting give a man over his issue, if all his care ends there and this be all the title he hath to the name and authority of a father.[xli]

LS: That is crucial, because here Locke denies any significance to the act of begetting; he has never gone so far before. Especially in the *First Treatise* he has never denied it, nor in the *Second* to this point.[xlii] Continuing:

Reader:
And what will become of this paternal power in that part of the world where one woman hath more than one husband at a time—[xliii]

LS: Let us stop there. What is the meaning of that? What would be the reaction of a man following the natural law tradition to this hypothetical or nonhypothetical case?

Student: An obvious violation.

LS: Sure. Locke does not say a word about that.[xliv] The traditional view[xlv] is that this is an entirely criminal situation, and how you could secure some degree of justice to the poor child is a very complicated question, but the case in itself is a criminal case. What does Locke say? He has no natural law objection, I would say, to this kind of arrangement; and that will become clearer in the next chapter, where we discuss conjugal power. What is the conclusion from that? If this is possible, that the woman may have more than one husband at a time and this is in principle as defensible as monogamy, what becomes of this natural duty of parents? "Parent"[xlvi] was of course always understood up to now as a monogamous [. . .] and the whole duty of parents depends, therefore, on the status of monogamy. And if all kinds of arrangements in this respect are possible, such as the one mentioned here, what precisely does this mean, then? This will come out more clearly in the following chapter, where he discusses conjugal power. To anticipate only one point, which I think is the crucial point, Locke shows on the basis of the demands of the natural law proper that the living together of the father and mother must be more lasting than is the case with some other species. In other words, the human child is both particularly helpless and the human mother needs also a longer time to recover from childbearing than some brute would; and therefore the father has to stay longer

[xl] In the original transcript: "inaudible."
[xli] *Second Treatise*, sec. 65.
[xlii] In the original transcript: "to this point?"
[xliii] *Second Treatise*, sec. 65.
[xliv] In the original transcript: "about that?"
[xlv] In the original transcript: "view (?)"
[xlvi] In the original transcript: "Parent (?)"

with that woman than, say, a stallion with a mare. That's about it. There is nothing said, by the way, about prohibition against incest. We come to that. The whole marriage [according to][xlvii] natural law becomes questionable; and that is bound to affect, of course, the duty of parents to children, which are always understood within a certain context of an understanding of marriage, of the relationship of the father and mother. Locke does not explicitly [develop][xlviii] the father–mother relation or the husband–wife relation in this chapter. He does this in the next chapter, but we have the first indication of this difficulty here. To quote Locke against Locke, he said in the *First Treatise* that it is impossible to draw any inference from fact to right, [from is to ought].[xlix] One could say this against Locke:[10] if it is not a legitimate possibility, he would have no right to refer to that, but if it is a legitimate possibility, he may. And if this is a legitimate possibility, it follows that the whole argument regarding the duty of parents has to be reconsidered in the light of the [later] [l]consideration of the status of monogamous marriage of nonincestuous character. That will be the question in the next chapter.[li]

Student: [. . .]

LS: But of course, if you take merely this fact in isolation, there follows nothing except that the mother must stay with the children. And also, assuming that women are relatively weaker than men, the women must be somehow protected in that [. . .] But this can be done in a great variety of ways. You can have it in the form of primate society where all the males tend all the females and then they become promiscuous among them, and there may be polygamy, polyandry, and all the forms of incest. What is necessary is only (a) a[11] protection of the human offspring by the mother who (b) herself must be protected, preferably by males. But *which* males, that is entirely[lii] irrelevant. And the kind of natural law which Locke is trying to build up is absolutely limited to this phenomenon of the particularly long duration of need for protection in the case of human offspring. I believe that Locke would say that the monogamous family is preferable, where those who are to take care of the offspring are clearly identified and clearly take the responsibility for the child; and especially, if all the fathers know that it is their child, it is conducive to their greater concern. But from Locke's point of view that would be a consideration of convenience, of calculation, which can be questioned by other considerations of convenience, such as if the proportion of males and females in a given society is 1:2, you are confronted with the question: Do you want to have a large [unmarried population][liii] who create all kinds of trouble, or would you not rather permit the males to have two women? A pure consideration of expediency can enter. And you could even enlarge that—and people have done that—to the case of[liv] incest, where the purely biological argument is that it is bad for the offspring. But you know that that is not so simple. That is at least a complicated question, and therefore one can make an argument for[lv] incest. Part of[lvi]them will come up next time.

[xlvii] In the original transcript: "inaudible."
[xlviii] In the original transcript: "inaudible.".
[xlix] In the original transcript: "inaudible.".
[l] In the original transcript: "inaudible."
[li] The transcriber proposes that Strauss may have said "That will be questioned in the next chapter."
[lii] In the original transcript: "(? Entirely)"
[liii] In the original transcript: "inaudible.".
[liv] In the original transcript: "(to the case of ?)"
[lv] In the original transcript: "(make an argument for?)"
[lvi] In the original transcript: "part of (?)"

Now in the next paragraph Locke turns to the duty of grown-up children, and you see he does the same strange thing again. He says: "though there will be a time when a child comes to be as free from subjection to the will and command of his father."[lvii] Why should it not be the mother? Again, one could as easily have said "the parents." And later in the same sentence he[12] [says] again: "exempts not a son from that honour which he ought, by the law of God and nature, to pay his parents."[lviii] You see this strange [. . .] where in one case he says "child" and "father," and in the other "son" and "parents." This is, again, [a] reference to this same problem of the status of the two sexes which is linked up with the question of the biblical understanding of these laws. There is also another thing towards the end of this paragraph: "It is one thing to owe honour, respect, gratitude, and assistance; another to require an absolute obedience and submission."[lix]

What Locke wants to say generally is of course clear: grown-up children are under an obligation to honor their parents, and the parents have no right to require absolute obedience from their grown-up children. But why does he state it once from the point of view of the parents and once from the point of view of the children? That's a strange construction. He could have said, "It is one thing to owe honor, etc., and another to owe obedience." I cannot explain it, but I am sure it has to be considered. What it suggests is this. The children have a duty—that is the first; the parents do not have the right. This much is clear, but not beyond.

Now in the next paragraph we come to this famous passage: "The subjection of a minor places in the father a temporary government which terminates with the minority of the child; and the honour due from a child places in the parents a perpetual right to respect, reverence, support, and compliance, too."[lx] You see, "compliance, too." There we have a smooth transition to obedience; that is what Locke meant when he said that. In other words, if you habitually say no to what your father asks you to do, can you still speak of honoring your father, not obeying him? That is a hard difficulty. I mean, in perfectly extreme cases it is perfectly intelligible: the father commands the son to change his job or his [. . .] then I think everyone would say he has no right to do that. But there are so many intermediate cases where a clear cut and universally valid distinction between honor and obedience can[not] be carried through: "[A]nd compliance, too, more or less, as the father's care, cost, and kindness in his education have been more or less."[lxi]

You see ["cost"], and you get, then, this beautiful formula: honor proportionate to cost. And that allows easily, as Locke indicates later on (in paragraph 72) that this is not limited to parents:

"yet there is another power ordinary in the father whereby he has a tie on the obedience of his children; which, though it be common to him with other men, yet, the occasions of showing it almost constantly happening to fathers in their private families, and the instances of it elsewhere being rare and less taken notice of, it passes in the world for a part of paternal jurisdiction."[lxii]

[lvii] *Second Treatise*, sec. 66. In the original: "though there be a time."
[lviii] *Second Treatise*, sec. 66.
[lix] *Second Treatise*, sec. 66.
[lx] *Second Treatise*, sec. 67.
[lxi] *Second Treatise*, sec. 67.
[lxii] *Second Treatise*, sec. 72. There is a break in the tape at this point.

The next sentence is very remarkable: "This ends not with minority, but holds in all parts and conditions of a man's life."[lxiii] That reminds us again that the duty to honor parents, as distinguished from obeying them, exists in minority, prior to coming of age, but there the old question arises again: How can they be aware of their duty, lacking reason? Now let us turn to the next paragraph, paragraph 68.

Reader:
On the other side, honour and support, all that which gratitude requires to return for the benefits received by and from them, is the indispensable duty of the child and the proper privilege of the parents. This is intended for the parents' advantage as the other is for the child's; though education, the parents' duty, seems to have most power because the ignorance and infirmities of childhood stand in need of restraint and correction, which is a visible exercise of rule, and a kind of dominion.[lxiv]

LS: What does he mean by that, "education, the parents' duty, seems to have most power"? More power than what? Does it not refer to the gratitude which the grown-up child owes the parents? To support the aged parent is the duty of the child; to educate the children is the duty of the parents. Now why does this duty of the parents, education, have most power? Because the ignorance and infirmities of childhood stand in need of restraint and correction. But do we not also have to consider the other side, that the power of the parents to enforce compliance [of the young children] is greater than[13] the power of the aged parent to enforce compliance with honor and gratitude and assistance? In other words, the grown-up children are strong; they cannot be compelled by the parents to take care of them, whereas the opposite is true of young children. Let us see the next sentence.

Reader:
And that duty which is comprehended in the word "honour" requires less obedience, though the obligation be stronger on grown than younger children—[lxv]

LS: Why is the obligation to honor stronger on grown than on younger children? That is the crucial point. Why is the grown-up son under a greater obligation to honor his parents than a youngster?

Student: He compensates for his lack of obedience by that.

LS: But can you say that a young child has a lesser obligation to honor his parents because he is in addition obliged to obey? The young child is obliged both to honor and obey his parents; the grown-up child is obliged to honor his parents but no longer to obey them. Does this mean that the young child is less obliged to honor his parents?

Student: . . . fact of power; in other words, appreciation.

LS: That is too vague. That *has* something to do with rationality. The grown-up children are under a stronger obligation because they understand it better. That has something to do with the broader question to which I referred: if Locke's thesis is correct, how can young children

[lxiii] *Second Treatise*, sec. 67.
[lxiv] *Second Treatise*, sec. 68.
[lxv] *Second Treatise*, sec. 68.

be under any *obligation* to obey their parents if this obligation is strictly rational and one must have reached the age of reason to have it?

In paragraph 69 you find again a very strong statement about the duty of honor: "But all the duty of honor . . . remains nevertheless entire to them [namely, to the parents—LS]; nothing can cancel that."[lxvi] But what about the case of the father who completely neglects his children, who runs away from the mother, and he was brought up by the mother alone or by a foster father—what about this situation?

Student: In the light of this other argument, the child doesn't know honor.

LS: Yes, exactly, so there seems to be a straight contradiction with that earlier passage. You see this again in paragraph 70: "it is plain all this is due not only to the bare title of father, not only because, as has been said, it is owing to the mother, too, but because these obligations to parents and the degrees of what is required of children may be varied by the different care and kindness, trouble and expense, which are often employed upon one child more than another."[lxvii] In other words, the spoiled child is under a much greater obligation to honor parents than the neglected child.

In the next paragraph, towards the end—I mentioned this already—there is a reference to filial *obedience* of a grown-up son, and that is a clear admission that the distinction between honoring the parents and obeying the parents cannot be consistently maintained.

Then we come in paragraphs 72 to 73 to this remarkable passage of how it comes that there is an appearance of paternal power, the power of the father, over his grown-up children. The grown-up children have to honor the parents, but that does not mean that the parents have any power, jurisdiction, over them, and yet this appearance exists. Locke answers that with reference to the fact that the father has power to make his children or one of his children, or for that matter any stranger, the heir to his estate; and this is no natural tie but is due entirely to calculation. Beginning of 73, "This is no small tie," which is a deliberate understatement. Later on in the paragraph he says "strong tie," which is a more proper expression. But that has nothing to do with natural law or with any moral obligation, but is a pure matter of calculation.

Now the last two paragraphs deal with the question of how the common mistaking of paternal power for political power has become possible. And the answer is, as I mentioned before: In early times the father, grandfather, or oldest man of the clan became in the course of time the political ruler of [many][lxviii] people. And that means a complete change of the legal status, and therefore cannot be used as precedent for Filmer's way for saying that all political power is essentially paternal power.

Now let me try to see whether I can sum this up. The difficulty is this. Chapter 5 amounted to a complete denial of the traditional notions of men's obligations and duties regarding property, and amounted to this: that the individual is free to accumulate as much money or other property as he pleases, and he can do with that as he pleases, which includes of course also a natural right to dispose of his estate in his will as he sees fit. The complete

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[lxvi] *Second Treatise*, sec. 69.
[lxvii] *Second Treatise*, sec. 70.
[lxviii] In the original transcript: "inaudible"

emancipation of the individual. Now the greatest, most obvious objection to this form of individualism is the sociality of man, and this sociality of man shows itself most clearly in the fact that man is generated by a human couple and is dependent on them for a very long time. The relations of the parents and children: that is, one could say, the rock bottom of the anti-individualistic view in its most popular form. Therefore Locke has to face this question, and apparently he takes a completely traditional view: the obedience of children to parents and the duty of parents to take care of their children. That sounds all very familiar and very traditional, but if we look more closely we see, clearest in the case of the obligation of the children to obey their parents but more subtly also in the case of the parents' duty towards their children, that this all becomes problematic, and the radical individualism asserts itself here too. It will become fully clear only when we come to the next chapter, where he discusses conjugal society. The tacit premise of the whole argument regarding children and parents is the monogamous family; but if the monogamous family is in itself a conventional arrangement and not natural, then the whole duty of parents as a natural duty, a natural law duty, is bound to collapse. To understand this whole subject it is necessary to consider paragraph 2, page 121.

Reader:
To this purpose, I think it may not be amiss to set down what I take to be political power; that the power of a magistrate over a subject may be distinguished from that of a father over his children, a master over his servants, a husband over his wife, and a lord over his slave.[lxix]

LS: Now this chapter, to which we will turn next time, "Of Political or Civil Society," deals at considerable length with conjugal society (paragraph 78) and later with master and servant (paragraph 85), which he takes together particularly with political or civil society. Chapter 4 dealt with slaves; chapter 6 dealt with father and children; and I just wonder whether one cannot discern something about the plan of the whole work from this enumeration in paragraph 2. The strange fact is that Locke discusses the relation of husband and wife and of master and servant in the chapter "Of Political or Civil Society." He does not discuss there the relation between father and children or the relation between master and slave. It would be appropriate to wonder whether there is not perhaps some connection, whether the husband–wife relation and the master–servant relation is not somehow closer to the political association than the father–child and the master–slave relations. Let us try to figure this out. That the father–child relation is entirely different from any political relation, would this make sense?

Student: [. . .]

LS: But here the question arises whether there can be a strictly contractual relation between parent and human beings who are not yet in possession of freedom.

Student: [. . .] tenderness of the various instincts. Aren't these what he is trying to get at as the natural laws which cannot be transgressed?

LS: If there are such human beings who have no tenderness towards their children, and thus run away, you can't do it. If you have civil society, you have courts and civil magistrates, but that's all. The obligation can't come under [. . .] and in the case of the others an obligation is not necessary because they will do it out of natural affection. But I am now concerned with

[lxix] *Second Treatise*, sec. 2.

this question, which may be entirely hypothetical, whether there is not a closer connection between political society and conjugal society and master–servant society on the one hand, than between political society and father–child and master–slave society on the other.

Student: [. . .]

LS: In other words, the servant is a being who is capable to make a contract; the child is not, as child, capable to do that. And what about the slave?

Student: The slave also has no right against him and cannot bargain with him.

LS: Who is a slave, according to Locke? I mean, the slave who is justly a slave. He is a convicted criminal, and as such he is not capable of a contractual [relationship].[lxx] What about husband–wife?

Student: That is a contractual relationship *par excellence*.

LS: So in other words, in these two relations the people concerned are capable to make a contract, where in the other two relationships there is no possibility of a contract. That is one point. But still perhaps one has to go beyond that. If you look at civil society as a whole as established, you find there of course husbands and wives, and you find masters and servants, but ordinarily in older times the wife, women in general, were not citizens. Still, there could be the following consideration which may be absolutely not defensible; I suggest it entirely hypothetically. When Aristotle speaks in his *Ethics,* in the eighth or ninth book, of friendship, he compares the various human relations, the relations between individuals, to political regimes. For example, the father–son relation is like kingship. And there he compares the relation between husband and wife to an aristocratic government. I give you the reference: 1160b32 to 1161a25. That is to say, the well-ordered husband–wife relation will have the character of an aristocratic relation. And the master–servant relation is of course an entirely different one. I just wonder whether Locke did not think of the most famous difference within civil society—to use the language of both Aristotle and Machiavelli: the rich and the poor. The poor are represented of course by the servants, people who have to earn their living, in the extreme case, by being servants; and on the other hand, the reference to the husband–wife relation might be a reference to the wealthy part of the population. This is entirely speculative. Perhaps it is sufficient to say that only these two relations, husband–wife and master–servant, are contractual and therefore akin to political society, whereas the other two relations are not strictly speaking contractual and therefore should be treated independently. The more I think of it, the more I am inclined to give this more obvious interpretation the preference. But still, the indication is that the problem of the difference between the rich and poor must not be forgotten. The more we come to the political part, that I would like to stress, because if it is a function of civil society to protect property, and that means, of course, in Locke's sense to protect the *increase* of property and not merely to protect the property everyone has inherited from his parents. Do you see that difference? You can have a legislation which recognizes private property very strictly, so much so that the individual is not permitted to alienate his ancestral estate; that is of course a recognition of private property which severely limits the disposal of private property. We understand today by private property the right of the individual to dispose of his private property as he sees fit. Now in the Aristotelian scheme, the emphasis was altogether on private property but not

[lxx] In the original transcript: "inaudible."

necessarily on private property wholly at the disposal of the individual. That is an important distinction, and Locke is the most radical version of completely free disposal of property by the individual. Now if that is so, and with the implication that this should be in particular also an inducement to accumulation of [wealth],[lxxi] then you have the great difficulty [of] preventing the poor from confiscating the property of the rich, or at least of preventing the rich from accumulating more and more; and therefore an unqualified democracy would create a very great difficulty for this protection of property. Therefore, we have to watch that. That was the thought in my mind when I thought of the connection, via Aristotle's *Ethics*—husband–wife, aristocracy—to which one should not pay attention if it is not forced upon us by other considerations.

Student: [. . .]

LS: But if it is an action of will and has no other basis than the calculation of your advantage, then it does not have the status of a natural law.

Student: But natural law is not moral.

LS: This one? Locke's? Oh, surely not. What are you driving at?

Student: Kant gives a rational law which is divorced from practical considerations.

LS: From our calculating concerns. You are supposed to *act* on the categorical imperative, and therefore it is not divorced from practical consideration.

Student: But Locke's scheme is also rational but always considers what I am getting from it.

LS: In other words, the Lockean position is not so greatly different from that of utilitarianism. Yes. But if we reduce your difficulty to a question which is susceptible of an answer, one would have to say this: We have in Locke,[14] even from an early point of view, certain natural laws which man cannot transgress—say, supply and demand, to take this simple example—where, however, this difficulty arises: that men *can* transgress it. Otherwise, there would be no necessity to state this law as a policy demand, [and] it is stated. That of course means man can transgress them, but at his obvious damage in this life; and therefore, if only people know how foolish it is to restrict the operation of the law of supply and demand, they would abandon these restrictions. That's one point.

On the other hand,[15] the same would apply even to the fundamental law of self-preservation. Self-preservation is supposed to be effective in every place at every time. That is the reason why it is made the fundamental law in Locke and in Hobbes. But as a matter of fact, it is not always effective. Then the question arises: How come? And the answer would be in most cases that is due to sheer error, prejudice, stupidity. To take Locke's example, if the young Hindu widow is burned after the death of her husband, that is sheer prejudice of the people; if she were enlightened she would run away and marry again. Of course that doesn't cover all the cases, because the difficulty that you need soldiers to fight is unimpaired by all such considerations, and that creates a certain difficulty.

[lxxi] In the original transcript: "inaudible."

But fundamentally his thesis is this: the law of self-preservation is a natural law of the kind which enforces itself [. . .] But then how can you speak of a natural law at all? And here the answer of Hobbes [. . .] is this: If you take self-preservation, the fundamental principle,[16] then you see this requires a state of peace, because if there is a state of war of everybody against everybody, the chances of survival are very small. So we get peace as the demand, which means [that] while all men without any reflection or calculation are concerned with their self-preservation, they need reflection, they need calculation in order to see the necessity of peace. Therefore everyone generally speaking strives for self-preservation, but not everyone strives for peace. If we elaborate, we see that in order to have peace we must behave in a certain way: let us say we must be nice to our fellows, because if we are not nice we increase the degree of hostility, enmity, and therewith the prospect of fighting. Therefore the natural law as Hobbes understands it, and fundamentally Locke too, is "Be nice"—well, with elaborations: be gentle, be meek, and be accommodating and all this kind of thing; be a good sport. But this has to be stated as an "ought," and it *is* an "ought" because we do not have a natural inclination to that, whereas we do have a natural inclination to self-preservation. Therefore this "Be nice" or "Be a good sport"[17] retains the same status of a *law* which can be transgressed with the traditional natural law, only the difference is this: if we call this the sphere of the ought and this the sphere of the is [LS writes on the blackboard], what they meant was there is a point where the two spheres converge, and that is in the desire for self-preservation. Here what is right to do, what ought to be done, and what men habitually do coincide. The strongest passion in man, a mere "is," is at the same time the wisest passion: self-preservation. Here you have complete [. . .]

Now the objection was this, that in the traditional teaching you have here, let us say this is the behavior of most men most of the time: this is the "is." And then there is an end of man toward which men were said to be directed by nature [. . .] Then they said: Since this end is never really effective, you get a fantastic commonwealth if you make this the basis of your understanding of politics. You get a notion of a best society in which the best men, the truly virtuous men, would rule and the non-virtuous men would submit to the rule of the virtuous. Of course they knew that this rule of the virtuous over the non-virtuous required force; that they did not deny. But anyway, men like Machiavelli, Hobbes, and Locke said that this was ridiculous: the non-virtuous will not bow to the rule of the virtuous. And that is a fantastic thing that we should [aim for this],[lxxii] because the least effective, namely, the alleged ends of man, are made to be the starting point of an understanding of political matters. The wise thing is to make the massive effective [force][lxxiii] the starting-point for political matters; and the formula for that most effective thing is self-preservation, which of course must be enlarged and properly amended. Locke would add property; Machiavelli himself would have. Property *is* self-preservation which takes on flesh. But they believed by making this need for self-preservation and the calculation of the means conducive to self-preservation—by making that the basis, they thought they would get what we would call today a realistic political teaching. This notion still lingers on in many ways. For example, why do people think that the real illumination of human history will be found by economic history? And it is not only Marxists who say that. Why is that? That's the real life, because it is the most elementary thing: men cannot possibly live without producing goods, without getting means of livelihood. That is the most fundamental thing, and therefore that must be the clue to the understanding of everything else. Of course Marx developed this most completely, but that has a power much beyond Marx. The enormous concern of historians with economic history is based on this

[lxxii] In the original transcript: "inaudible."
[lxxiii] In the original transcript: "inaudible.".

assumption that this is not only an important "factor" but really the basic factor, because before you can do anything else you must have the means of livelihood, whether supplied by nature or produced by man. There are all kinds of variations of that thought; utilitarianism was a particularly powerful one in the nineteenth century. But there are also other forms.

Student: In Locke you do not have any kind of law which even the most selfish man would not obey.

LS: If you take the more familiar case of utilitarianism, you have an ought which is not strictly speaking an ought, but it comes in there in a strange way. Because why should you be concerned with the greatest good of the greatest number? Why should you not be concerned with the greatest happiness of yourself, and the public be damned? I think the duty behind all that is [given in][lxxiv]Adam Smith's notion[lxxv] [that] precisely by thinking only of yourself, you will do the best thing, because then you will contribute [to the common good]. By a strange teleology, if everyone thinks only of himself, and improves his own plot of land and so on, he will increase the common stock of mankind, to quote Locke. That of course would be wonderful. If everyone were [entirely][lxxvi] selfish, everything would be fine. While this is wholly insufficient, I agree with you, it is not so entirely. The trouble is, in the case of the grossest crimes, political or private, which we have occasion to observe, it was really not shrewd selfishness, but another [motive].[lxxvii] For example, shrewd selfishness of the German people would have consisted in putting Hitler in a mental institution. Germany would have become the greatest power in Europe without Hitler, and this whole calamity of the Second World War would have been avoided. Don't think too ill of farsighted selfish calculation. I think you see it also in the case of an individual when you say: A fellow who is very selfish, he thinks only of himself, if he is given a position of responsibility he would surely exploit it only for himself. If he wants to have a position of power he would at least have to be concerned with the good of the group, even at some sacrifice to himself. It is a very ignoble view, I grant you that, but it is better than certain insanities and emotional things which have done and do so much harm. I think the deepest discussion of this problem of farsighted calculation and its limitations is Thucydides's *History*, in which he makes it very clear how much what we respect and what is humane is really in accord with long-range calculation. And yet there is a subtle difference between them. The simple equation of the morally good and the long-range interest does not work. If one takes the principle of long-range calculated self-interest as follows, "Think that the next time the shoe may be on the other foot," that prevents lots of injustice. If you are in a position where you could hurt another man, or do what you want, and simply think of the next occasion, that is a moderating principle. So we must not be too [dismissive],[lxxviii] but on the other hand we must say that, especially in the form which it takes later on in Hobbes and Locke, it is not sufficient. And from this point of view, what Rousseau and Kant later on did, that they reminded men of a higher principle of morality, was absolutely necessary.

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[1] Deleted "the."
[2] Deleted "of."
[3] Deleted "Now" at beginning of next sentence.
[4] Deleted "speaks."
[5] Deleted "and."

[lxxiv] In the original transcript: "inaudible."
[lxxv] In the original transcript: "(?notion)"
[lxxvi] In the original transcript: "inaudible.".
[lxxvii] In the original transcript: "inaudible."
[lxxviii] In the original transcript: "inaudible."

[6] Deleted “that.”
[7] Deleted “man.”
[8] Deleted “aharsh.”
[9] Deleted “and.”
[10] Deleted “if Locke did not mean that this was a legitimate possibility.”
[11] Deleted “non-.”
[12] Deleted “speaks.”
[13] Deleted “compliance.” Moved “of the young children.” Deleted “—than.”
[14] Deleted “certainly.”
[15] Deleted “we have.”
[16] Deleted “and.”
[17] Deleted “has the same.”

On Locke's *Second Treatise*: chapters 7-8
Session 13: March 3, 1958

Leo Strauss: One main point which you seemed to wish to make[i] is this: the subjection to government in the social contract is not necessarily permanent or lifelong. Is that correct? That made sense, that this Locke meant in contrast to the appearance of permanence. Now if we look back to the end of the seventh chapter, the quotation which you read last, to which we will return later, that we have still that natural freedom—

Student: The right to reappraise the origin of government, although we may be in a government to which we attach . . .

LS: Yes, but does this not mean that the original freedom of the state of nature survives in civil society?

Student: It would seem to indicate that.

LS: Now what about the remark at the end of chapter 7 to which you referred?

Student: That would seem to indicate then that although Locke had never met anyone that great a patron of anarchy as to assert that civil society and the state of nature are the same thing, and yet he thought that himself.

LS: That would go a bit beyond . . . That does not mean that they are the same thing, but that they are much closer to one another than appears at first glance. That is one point. You said the argument—contrary to what is the accepted view; I certainly share that view, that this criticism of absolute monarchy as such is directed *also* against Hobbes. And you are not sure that this is the case. What are your reasons? I mean, of course not *only* against Hobbes, because Hobbes was not the only man who spoke highly of absolute monarchy, but why do you exclude Hobbes here, or imply that?

Student: I was not able to be[1] [conclusive] on that because I could not see from my first reading of Hobbes whether Hobbes's absolute monarch, or his sovereign, was considered a private person and as such could be in a state of war with any of his subjects in the realm. I was not able to see whether Hobbes's sovereign had only political power, power of the office, or also economic control.

LS: But Hobbes occasionally uses the big distinction between the king in his private person and the king in his public person. You know, when they made the rebellion in 1640, they fought for the king, they said, for the king in his public person; that the king in his private person happened to be attacked was in their opinion legally uninteresting. Locke occasionally uses this distinction, but that has a certain political importance; for example,[2] if the king makes a certain remark to the courtier, "Kill that fellow, I do not like him," or so, whether that has to be conceived as a command of

[i] Strauss responds to a student's paper, read at the beginning of the session. The reading was not recorded.

the king if not given under the seal or any other formal action. And Hobbes takes it for granted that in an orderly government, the king himself would make a distinction between his official acts and his private acts so that his courtiers could not make a mistake. But as far as the principle is concerned, there is no limitation whatsoever on the sovereign, no legal limitation of any kind in Hobbes. And that is so, regardless of whether the sovereign is a body of men or a single man.

The point which Locke makes is this. As long as there is any member of the community, including the king, who is not subject to the law and cannot therefore be judged, and against whom no writs do run, this man is still in the state of nature. Of course, even today no writs can run against Queen Elizabeth II, but she certainly is not in the state of nature because her [status][ii] in this respect has been made sufficiently clear. But legally she is in the state of nature, because she cannot be accused. If there is any member of society who is not subject to the law, and therefore not also subject to judgment by the proper judges, this man is still in the state of nature.

Now we come to your cryptic sentence, as I indicate it, because I did not understand it at all, and I think it is relevant.

Student: I had just previously discussed Locke's description of the growth of words and how they become tools of communication, so to speak, and had made a suggestion that a parallel could be drawn to the growth of political society, and I did it in three stages. The absolute freedom in forming words: you can make any sounds that you please for any ideas that you have in your head.

LS: What is the political equivalent of that stage?

Student: Man's freedom as expressed through property.

LS: So in other words, the complete freedom of the state of nature. All right. Second stage?

Student: But then you will find that some people are not able to understand these sounds that you make pertaining to your own peculiar ideas, and so in order that communication may be established, you . . . You find this inconvenient in the second stage. And the same would apply to property, I think.

LS: In other words, the establishment of a common meaning of the term corresponds roughly to the law, to the establishment of the law in society? Yes. And the third stage?

Student: The third stage would be that voluntary imposition, the second stage being just noticing that there were inconveniences.

LS: Yes, that one can say. I do not know whether Locke emphasized that, but something of that thought can be said to be implied in the traditional understanding of language. What was the predominant traditional view as to the character of language,

[ii] The transcript has a blank space here.

clearly stated by Aristotle, but also stated by others? Well, for example, we say here *table*; the Greeks say *trapeza*; and there are an infinite variety of different names. Germans say *Tisch*. What is the table, though, this one? I mean, is it more appropriate to call it *Tisch* than to call it table? What is the difference? By virtue of what is this called *table* in the English-speaking countries and, say, *trapeza* in Greece? On the basis of what?

Student: Convention.

LS: Convention. That is, in other words, a fundamentally arbitrary imposition—a necessary one; we could not live without speaking—but the words as such are by imposition. There is a Platonic dialogue in which the alternative is discussed, namely, that the names are natural, the *Cratylus*—and which leads to all kinds of funny consequences. And the meaning of this Platonic dialogue is difficult to establish. So that was the predominant view which Locke accepted, and if you try to establish a certain parallelism, then, between the convention establishing words and the convention establishing laws, there are no great difficulties there. On the other hand, I do not see why it is necessary. Now let us then leave it at this remark. We come back to some of your observations while we go on.

Now first, chapter 7 and its place in the plan of the *Treatise*. I mentioned this problem last time. In paragraph 2 of this treatise, Locke speaks of four associations: the master–slave, the father–children, the husband–wife, and the master–servant relations, and all these four as distinguished from the political association. Now all these four are taken up in the *Second Treatise*. But strangely, the discussion of slavery in chapter 4 is severed from the discussion of the others by chapter 5, which deals with property. Now in order to understand that, we have to consider the fact that in the *First Treatise* Locke speaks with some emphasis of the dualism of fatherhood and property. This happens to be in paragraph 77, and the seventy-seventh paragraph of the *Second Treatise* is the beginning of the chapter. So perhaps there is a connection there. At any rate, what Locke does is this: in chapter 4 he discusses slavery; in chapter 5, property; chapter 6, fatherhood; and chapter 7, the conjugal society and the master–servant society.

Now in the property chapter we have seen the radical "individualism" of Locke. The parent–child relation in chapter 6 seems to be *the pièce de résistance* of those who say that man is by nature social because certainly man is generated by a human couple, people united in association. And this child is essentially dependent upon this association of his parents in order to grow up. We have seen that Locke undermines this fundamental rock-bottom of man's sociality in his chapter 6. In chapter 7, he takes up the conjugal and master–servant relations, and we have discussed this question last time. Why does he do this under the heading of "Political or Civil Society"? It seems that the conjugal society and the master–servant society are closer to the political society than are the master–slave or the father–child relations. And some of you suggested last time as the simplest explanation that they are visibly contractual, whereas the master–slave relation is certainly not contractual. And the parent–children relation can also not be strictly speaking contractual, at least as far as the younger children are concerned, because the younger children, not yet possessing the use of reason, are not capable of making contracts.

I also note, and Miss —— is probably aware of that, as I saw from the conclusion which she drew, that this chapter is the only one in the *Treatises* which begins with the word "God," whereas chapter 8, the immediately following chapter, begins with the word "men." Now we find the same sequence in the *Essay Concerning Human Understanding*, and the first two chapters of the third book, to which you referred. In addition to what you observed, I would say that in the *Essay*, if I remember well at least, when he says:

"God having designed man for a sociable creature [mind you, he does not say a social creature, but a sociable, meaning a creature *able* to become social—LS] made him not only with an inclination [the crucial term, "inclination"—LS] and under necessity to have fellowship with those of his own kind, but furnished him also with language which was to be the great instrument and common tie of society."[iii]

So God created man with an inclination to become social and furnished him with language. Here he follows more or less the traditional view, but he indicates clearly in the sequel, in the same chapter, paragraph 5, where he says, speaking that all language starts from sensible things, and not from abstract notions of any kind—for example, "spirit" means primarily breath, "angel" means primarily a messenger:

"I doubt not but if we could raise the words to their sources, we should find in all languages the names which stand for things that fall not under our senses to have had their first rise from sensible ideas. By which we may give some kind of guess what kind of notions they were and whence derived, which filled their minds who were the first beginners of languages."[iv]

Now who were the first beginners of languages, according to the Bible? I mean, if you read it quite simply, without any deeper thought.

Student: Adam was created with speech.

LS: Yes, sure. But Adam himself named the animals, you see. I think the simplest reference would be to Adam. Now if the first beginners of languages were people who were unable to look beyond the sensible, then of course they cannot be said to have perfect reason, perfectly developed reason, as Adam traditionally was said to have possessed. That is another reference to the problem of the Bible and the biblical notion of the origin of man.

Now here he makes, you see, this ambiguous remark in the [*Second*] *Treatise*, chapter 7, beginning: "God, having made man such a creature that in his own judgment it was not good for him to be alone."[v] In whose judgment? Of course you have to consider the Bible, the biblical text. Who says it is not good for man to be alone?

Student: God says it . . .

[iii] *Essay* 3.1.1.
[iv] *Essay* 3.1.5.
[v] *Second Treatise*, sec. 77.

LS: God. But does[3] [Locke] here refer to God's judgment, or to Adam's judgment? That is a difficult question.[4] The Bible says clearly God, but "God, having made man such a creature that in his *own* judgment it was not good for *him* to be alone."[vi] Look at the use of the pronoun "him." That is ambiguous. In the latter case, the initiative to sociality would be in man's own judgment. But of course Locke here also says very clearly, God "fitted *him* [man—LS] with understanding and language to continue to enjoy it." There he accepts this view which he states at the *beginning* of the third book of the *Essay,* but which he later on tacitly retracts.

In the second sentence Locke says, "The first society was between man and wife, which gave beginning to that between parents and children."[vii] Conjugal society is prior to the parent–children society. And therefore the ultimate judgment on the parent–children society depends on the status of conjugal society. Conjugal society, as Locke makes [clear] later on,[5] is contractual. This does not necessarily make the parent–children relation contractual; it could very well be natural association which arrives on the basis of a contractual relation. But the problem is more complex. I remind you only of what we observed in studying chapter 6: strictly speaking, if we follow Locke's argument, children cannot be under a natural law obligation to obey their parents, because they cannot know the natural law, the natural law not being implanted in man but becoming known only through a process of theoretical reasoning.[viii]

Student: . . . becomes an obligation to man.

LS: Yes, if you can call it that. But an obligation of convenience is of course one which is strictly speaking a calculation. That is true. Now children cannot be under a natural law obligation to obey their parents, because natural law obligation can exist only for people who are studiers of the natural law. Grown-up children are under natural law obligation to honor their parents as distinguished from obeying their parents. But we have seen [that] the difference between honor and obedience is very difficult to maintain. Also, the degree of honor which children owe to their parents depends on the cost, disregarding the care, the cost which they made to their parents as children. Now if that is so—the relation of the obligation of the grown-up children who are capable in principle of knowing the natural law depends on the services which the parents rendered them in their childhood—then there is no essential difference between the duty of the grown-up children to their parents and the duty of any benefited man to any benefactor. It is the general law of gratitude, and nothing specific; and therefore one would have to consider the status of the natural law of gratitude in the context of Locke's thought.

Now let us look at Hobbes. I have not looked up Hobbes, I am sorry to say, but I depend on my memory. But if I am not mistaken, gratitude is also one of the duties of the natural law according to Hobbes. But what would be the rationale of gratitude, of the obligation to gratitude, in Hobbes's doctrine? There can be only one.

Student: . . . peace.

[vi] *Second Treatise,* sec. 77. Strauss's emphasis.
[vii] *Second Treatise,* sec. 77. Strauss's emphasis.
[viii] There is a break in the tape at this point.

LS: Sure. In other words, this general niceness which is required for making possible peaceable living together. And one can of course also consider the fact[6]—this consideration which is referred to from time to time in older literature, the calculating consideration—that the parents raise their children to have a staff for their old age. And that goes on from generation to generation. In other words, it is a kind of insurance. And therefore, from this point of view it would be strictly calculating; and just as the famous ties which wealthy parents, at least, have on their children by holding out the prospect of an inheritance—which, as Locke says, is not a natural tie but also, as he says, not a small tie. So it is perfectly possible to understand Locke's teaching regarding parent–children as a fundamentally contractual relation.[7]

At any rate, the basis of the parent–children relation is the man–wife relation.[8] [Now the question arises]: What about this relation? They are parents by virtue of a compact, but what are the conditions of a valid compact making a human male and a human female husband and wife? We have had some reference to this problem in the *First Treatise*; I refer you now to only two of them. On page 89, which is paragraph 123, in the middle, where he says, "and what in nature is the difference betwixt a wife and a concubine?" which in the context suggests [that] in nature there is no such difference.[ix] The other passage is on page 92, paragraph 128:

Reader:
God, making it a divine institution that men should not marry those who were of near kin, thinks it not enough to say, "none of you shall approach to any that is near of kin to him, to uncover their nakedness"; but, moreover, gives rules to know who are those "near of kin," forbidden by divine institution, or else that law would have been of no use; it being to no purpose to lay restraint or give privileges to men in such general terms as the particular person concerned cannot be known by.[x]

LS: You see, Locke says twice here "divine institution." That indicates a positive divine law, i.e., not natural. The question is: Is there any natural law condition at all for Locke against incest in any form? Must the male and the female be in a certain degree of non-blood-relatedness in order to be able to become husband and wife, merely mating males and females? We must see what Locke's answer to that is in the sequel.

Now[9] in order to establish the precise[10] [nature] of the *end* of conjunction between male and female—and this is fundamentally the same as that in all animals—[he says] it must "last, even after procreation"—*even after* procreation—"so long as is necessary to the nourishment and support of the young ones . . . This rule, which the infinite wise Maker hath set to the works of his hands, we find the inferior creatures steadily obey."[xi] They do that, and of course without the use of reason, by natural instinct. What about men? Do they steadily obey it? If men also would steadily obey it, we would have here the case of a law of nature which cannot be transgressed. But we know from some examples which Locke has given that man does not steadily obey it. He gives the example of Indians (you remember that), who leave, where the mother

[ix] *First Treatise*, sec. 123.
[x] *First Treatise*, sec. 128.
[xi] *Second Treatise*, sec. 79.

alone stays with the children and the men leave. The question is, however, not merely the fact: Is this not a crime of the father to desert the small children? Is there a natural law obligation? And of what kind, and of what length?

The beginning of paragraph 80: "And herein, I think, lies the chief, if not the only, reason why the male and female in mankind are tied to a *longer* conjunction than other creatures." And later on in the middle of the paragraph, "longer," and the fifth line from the end, "more lasting," and page 161, top, the second line of paragraph 81, "more firm and lasting." So there is nothing said of simple permanence, but only longer than, say, for example, dogs. He says "more firm and lasting . . . than the other species," so that any species, those who stay longest with their young ones, which would they be? The elephants? I do not know. Does anyone have an idea, where the two, the male and the female, stay together for the longest time? We must look at other beings in order to see what "more firm and lasting" would give us as the lower limit of human conjunction.

Student: As I understand it, the apes have the next longest prolongation of the infancy.

LS: How long do they stay together?

Student: Two to three years.

LS: That long? I see. So[11] at least three years would be the consequence of that, up to this point. But I believe that is the *only* limitation which Locke indicates; there is no indication whatever regarding incest. We also have to consider—we will come later on perhaps to a passage: What about the other crimes or sins which are possible in this sphere, unnatural conjunctions, etc.? Are they forbidden by the fact, by the natural law that they are not conducive to the procreation of offspring? We must keep this question in mind.

In paragraph 82, Locke emphasizes not only the limited character of the association, but also the limited character of the rule of the husband. He has only by nature a rule with a view to this particular function of the conjugal society, and therefore no right over life and death. But what [happens] in the case of conflict between husband and wife? He says the rule must be placed somewhere, and therefore it falls naturally to the man's share as the abler and the stronger. So there is here a natural inequality of a very great importance, because that is so common, the difference between men and women. But how is this compatible with the natural equality? That is a very pertinent question, because not in all cases is the husband the abler and stronger, as Aristotle himself in his wisdom points out, that this unnatural thing happens, that a woman may be brighter and stronger than her husband. But that is from Aristotle's point of view a somewhat unnatural situation which arises from time to time because nature cannot always achieve what she wishes to achieve.

But even if they are equally strong—let us assume for the moment—then the wife does not necessarily obey the husband. So there will be conflict. What will happen then? What is the legal situation then? Then some compulsion is necessary. Who will exercise the compulsion, and by what right? Remember the natural equality which is not made obsolete by this kind of inequality. What is the fundamental right?

Student: Self-preservation.

LS: Who has the greater right regarding self-preservation, the husband or the wife?

Student: No one?

LS: Equally. So in other words, in case of conflict, the husband or the wife,[12] by virtue of the right of self-preservation, may very well kill the other. To say nothing of subjugation. I warn you that this possibility must be kept in mind.

But here is the other point which Miss — noted in her paper. Where he[13] [says], in the middle of paragraph 82, the wife remains "in the full and free possession of what by contract is her peculiar right." You had some difficulty with that.

Student: Since he does not state exactly what these rights are.

LS: Well, any of them. That she has a certain piece of gold, or a pebble which is absolutely hers and which the husband must never touch. Anything. Let us assume that this is a condition by which she united with him—that is, a contract. Why is this contract valid? Let us first see how it looks on the surface of the argument. Because promises are binding: principle of the law of nature, just as in Hobbes. There is no difficulty here. The difficulty is perhaps this. On the bottom of this page, when he says "community of goods and the power over them" and so on, "and other things belonging to conjugal society, might be varied and regulated by that contract which unites man and wife in that society." In other words, the positive law.[xii] What Locke implies here is this: the normal situation would be community of goods; and this can be altered by civil legislation, but it can also be altered by mere contract in the state of nature. The meaning which these remarks here have, I believe, is only this: that Locke is trying to give a sketch, at any rate, of a natural law doctrine regarding conjugal society in the state of nature. And a part of it would be such that, for example, the community of goods would be assumed to be the normal situation, but modifiable by contract. That of course has nothing to do with the much more serious, much more interesting question: What natural law limitations are there on conjugal association by the law of nature? I refer again to the problem of incest, and to say nothing about the question of permanence. That there is no natural law obligation to permanence Locke makes very clear by his use of the comparative all the time: "more firm and lasting," and similar expressions. That it does not exclude incest is [made] perfectly clear by the complete silence about incest in this connection. There is also another reference in the *First Treatise*, which we have discussed at the time and of which I only remind you. That is in paragraph 59, where he speaks of adultery, incest, and sodomy, "sins which I suppose have their principal *aggravation* from this, that they cross the main intention of nature, which willeth the increase of mankind," and so on. So they have their aggravation from the natural intention of nature, not their primary basis. The primary basis, I believe Locke means, is divine law, divine positive law.

Let us now turn to paragraph 87, unless one of you would like to see some very worthwhile thing in the intermediate paragraphs, 85 to 86. [Paragraph] 85, of course,

[xii] *Second Treatise*, sec. 83.

is the only one dealing with the master–servant, as you can see. Did you find any solution to the question why he calls it in the heading, "Of Political or Civil Society"?

Student: You mean the difference between the two chapters?

LS: No, it is merely a terminological question. Why does he speak of political *or* civil society?

Student: The question occurred to me. I did not answer it. It occurred because in the eighth chapter he says only "political," and I wondered what the significance of the change was.

LS: I mention only one point at the end of paragraph 84, where he speaks of "politic society." Do you see that? At the beginning of paragraph 83, he speaks also of "politic government," whereas later on he speaks only of "political" and "civil," and then he drops the "civil" altogether, as you say. I mention this only as a point which someone[14] should try to clarify [on some occasion].

Now let us turn to paragraph 87, and read this slowly from the beginning. In paragraph 87, the discussion of *political* society proper begins. Up to this point he has spoken only of[15] prepolitical society.

Reader:
Man, being born, as has been proved, with a title to perfect freedom and uncontrolled enjoyment of all the rights and privileges of the law of nature equally with any other man or number of men in the world—

LS: You see he speaks here only of the rights and privileges and not of the duties. Of course you could say he implied duties, but still it shows where the wind is blowing. Yes?

Reader:
hath by nature a power not only to preserve his property—that is, his life, liberty and estate—against the injuries and attempts of other men—[xiii]

LS: Let us stop for one more moment. Locke always has this in mind when he speaks of property, of governments established for the sake of property: he means by "property" life, liberty, and estate. That goes without saying. Still, it is notable that he calls that whole by the name of "property." The emphasis is on property proper, on estate, the idea being not only that this should be the primary preoccupation in civil society, but also that this should be the primary reason why civil society is necessary; or in other words, that the real object of conflict between men, of interesting conflict, concerns property. The cases where a man decides to kill another or to kidnap him, deprive him of his liberty, are politically not so important as problems concerning property. There is a general agreement, in spite of Spengler,[xiv] that the people at large

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[xiii] *Second Treatise*, sec. 87.

[xiv] Oswald Spengler (1880-1936), German historian, author of *The Decline of the West* (1918), a book Strauss cited many times. Strauss saw Spengler as a thinker greatly influenced by Nietzsche. The reference to Spengler in this context is most likely to his form of cultural

want murder and kidnapping punished. But there are serious disagreements as to the proper way of regulating property. Because the crimes against property, thefts and robbery, are overall of less interesting character, and to the extent to which they are interesting, like poaching in old England, they have very much to do with the whole regulation of property. These people felt that they ought to have the right to hunt, that that should not be limited to the squire, and that it was really not merely a petty crime, although it was a punished crime, but was based on a questioning of the justice of the whole situation.

Student: To whom does he refer when he speaks of "as has been proved"?

LS: By him, I am sorry to say. That is, you can say, a great claim which he raises. That is a very pertinent question. Under what conditions would he have proved it? We have discussed that briefly when we discussed chapter 2. If all men are by nature equal, this consequence follows. Are all men by nature equal? Did he prove that? How did he try to prove it? I mean, look at the argument. How did he try to establish it?

Student: In large part, it seems to consist in a refutation of Filmer.

LS: Very good. In other words, he builds up the argument this way: either you assume the natural inequality of men, which includes the natural subjection of some men to others, and that means Filmer. Then you have to show *now the* heir to Adam, which, being utterly impossible, shows the absurdity of his whole position. That of course is not a good argument, because you can assert natural inequality without speaking of[16] [Filmer]. Very good. But what was the other proof, which he gives in chapter 2? I remember. He quotes Hooker. He says, "This equality the judicious Hooker looks upon," and so on.[xv] That he makes the foundation of all that. But you must not forget that proof from authority was not always regarded as impossible. And Locke did not say that he would not argue in this book on the basis of authority, as a defense of that. Where did Locke say that he is not averse to arguments based on authority? Paragraph 52, beginning: "It may perhaps be censured as an impertinent criticism, in a discourse of this nature, to find fault with words and names that have obtained in the world." This is a discourse of a particular nature; of what nature it is, we can establish if we only take the trouble. I refer you to the fact that he speaks figuratively of "us." "Us" means Englishmen, and Englishmen, say, of 1690. Certain things, say, the British Constitution as then interpreted, were given as a political datum on the basis of which to argue, just as today in a political treatise someone refers to the American Constitution, say, as now interpreted by the Supreme Court. That is perfectly legitimate and is a necessary form of argument in a political treatise. The difficulty arises from the fact that Locke's *Treatise* creates the impression of being a philosophic treatise. But it is not simply a philosophic treatise, and therefore "proof" is an ambiguous term. There is philosophic proof: there is legal proof; there is a kind of rhetorical proof. Locke did not say that he would only limit himself to philosophic proofs, and he even indicated—there is another remark which I do not remember, but he certainly indicated at the beginning of paragraph 52 that this is not a

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relativism, which Strauss saw to be opposed by the universal agreement he cites in his comment.

[xv] *Second Treatise*, sec. 5 ("This equality of men by nature the judicious Hooker looks upon" etc.).

philosophic or scientific book. But there is nevertheless a more serious, more scientific argument as well, which one can state as follows. Men are of course both equal and unequal. Most men have one nose and two ears, and in this respect they are equal. Then there are other respects in which they are unequal: size, etc. Therefore we must make a distinction between the politically important and the politically unimportant equalities and inequalities. We find a very good discussion of that in Aristotle's *Politics*, book 3, where he indicates the fact, for example, that to be a good runner or to be handsome as distinguished from a bad runner and an ugly man, is not a politically relevant inequality, at least generally speaking, or essential.[xvi] But the question arises: What is the most important politically relevant equality or inequality, in Aristotle. What would you say? It is easy to answer, because Aristotle says that.

Student: [Reason.][xvii]

LS: Yes, but Aristotle uses a more specific word, and not speaking only of capacities but of something more actual.

Student: Deliberation? Contribution to man.

LS: But what is *the* most important contribution man can make? What is the most important inequality among men? In what does it consist?

Student: Virtue?

LS: Virtue, of course. Aristotle says so; there is no ambiguity possible. Not wealth or other things; wealth being a politically relevant inequality, but virtue is the most important of all. What does Locke say? What is the most important equality or inequality among men? What is the most important phenomenon to be considered by the student of politics?

Student: Self-preservation.

LS: Self-preservation, as distinguished from virtue, is equally possessed by everyone,[17] whereas virtue is not in fact, and perhaps not in any possibility, equally possessed by all men. Here you have the difference between Aristotle and Locke in a simple formula. Now if the most basic and most important political phenomenon is the need for self-preservation or the right of self-preservation, then men are equal in the most important respect. The other equalities or inequalities may be neglected, just as Aristotle also neglects being a good runner or good tightrope dancer, or being handsome, in discussing equality or inequality. That would be the proof.

Student: In this context, how are we to interpret Locke's several references to men's common nature and faculties and powers? Does that reduce to self-preservation, or does it have something else—?

LS: I remember, he refers [to it] once clearly in the *First Treatise*. Does he refer to it also in the *Second Treatise*?

[xvi] Aristotle, *Politics* 1282b25-30.
[xvii] Brackets in original transcript.

Student: He does at the beginning of the second chapter.

LS: Let us look at that.

Reader:
creatures of the same species and rank, promiscuously born to all the same advantages of nature and the use of the same faculties—

LS: "should also be equal."[xviii] That obviously does not follow. Because Aristotle too says that all men are "creatures of the same species and rank, promiscuously born to all the same advantages of nature and the use of the same faculties," Aristotle would not object to that. But from this it does not follow that[18] if they either by nature or by exercise establish inequalities among them [. . .] that does not follow at all. The real argument is the absolute supremacy of the consideration of self-preservation. That is present and actual, according to Locke, in every human, male or female, and of course also in slaves. The slave according to Locke, as we have seen, is not a natural slave. The slave is only a man released at the pleasure of someone else from the death chamber. He is in fact legally condemned to death, but for some reason or other he is lent out, you could say, to someone for use. He is no longer a living human being, you could say. Therefore he is not a natural slave.

Student: Well, are the naive supposed to believe this argument on the common faculties, and the profound supposed to go beneath?

LS: The common faculties are there. But the degree of development is of course politically of the greatest importance. Therefore, in order to make this stick, one would have to go to another consideration, namely, of something which is not a mere faculty but which is actual in every human being and at the same time is so fundamentally important that it is sufficient to make it the overriding consideration. That is what men like Hobbes and Locke do. So I think that one can understand the equality thesis only on this basis. I am aware of the fact that Hobbes, at least in the chapter in the *Leviathan* dealing with the subject, tries to show that men are also equal regarding their faculties. But he does this by the use of this strange Cartesian argument that everyone is as wise as everyone else because everyone is as satisfied with his wisdom as everyone else, which was used ironically by Descartes, and can hardly be taken as a serious argument on the part of Hobbes.[xix] So we come back to self-preservation as the basic urge, as the fundamental consideration.

Student: Going back to the nature of the proof, is it not possible that here we have a self-evident proof?

LS: Well, if something is self-evident, it does not need a proof. On the contrary. Let me see. You suggest something to me. Look at the beginning of paragraph 5, on page 122, bottom. "This equality of men by nature the judicious Hooker looks upon as so evident in itself and beyond all question." Now Hooker took it as self-evident. Locke does not. That conclusion I would draw. Otherwise he would not have to prove it.

[xviii] *Second Treatise*, sec. 4.
[xix] Hobbes, *Leviathan*, chap. 13, with Descartes, *Discourse on Method*, part 1 (AT VI, 1-2).

How good the proof is, I do not now go into, but the proof is [that] the fundamental phenomenon by which we must take our bearings is self-preservation. From that it follows, because in this respect, one can say at least for all practical purposes, all men are equal: everyone wants to breathe. Everyone, if someone points a gun at him, takes cover, and other phenomena of this kind which they have in mind.

Student: [. . . Hobbes mentions three causes of war: self-preservation, defense, desiring someone else's property, and also honor and glory.][xx]

LS: If you look at Hobbes's argument more closely, he gives three reasons. Self-preservation and glory are two of them. The third is, I think, the need for power in order to defend . . . You need power and more power; and therefore conflict. But if you look more closely, you see what Hobbes said is this: *one* of these motivations alone, namely, self-preservation and its necessary corollaries, is legitimate. Glory is not legitimate. In the case of glory, because some men are unreasonably proud, unreasonably concerned with honor,[19] they make the conflict. Then of course the other fellow has to defend himself. But *the* ground of legitimate war, of offense or defense is self-preservation in Hobbes. One only has to study this page in the *Leviathan* on [the causes of war][xxi] carefully to see that Hobbes precisely is trying to make a distinction between a defensible cause of war and an indefensible cause of war.[xxii] What he tries to show is this: even if men would limit themselves only to the defensible causes of war, the war of everybody against everybody would follow. Not only because there are some people who are unreasonable or vicious, but even assuming that all men were good, there would necessarily follow the war of everybody against everybody in the state of nature. That is what Hobbes is driving at. So it boils down only to the primacy of self-preservation.

Student: Hobbes's theory would be founded on the prevailing instincts of men, yet there are some men who are willing to risk their lives. Even if their desire for honor is unreasonable, still there are a group of men who are not satisfied with a peaceful society.[xxiii]

LS: That is easy: They simply will be jailed or drawn and quartered, provided it is true that there is a sensible government around. Or, which is also a thought which must not be neglected, there are ways of channeling the desire for honor and glory, by just punishing all such desires for honor and glory which are dangerous to civil society while honoring or rewarding those which are conducive to its welfare. In other words, honor and glory, by becoming subordinated strictly to peace, to the peace of society,[20] become innocuous, and they can even become helpful. The simplest phenomenon, the most important phenomenon of chastised and limited desire for superiority, is peaceful competition. In peaceful competition you have the element of desire for superiority, but strictly supervised and even made a tool for social well-being.

[xx] Brackets in original transcript, suggesting that this is the transcriber's supposition of what the student said.

[xxi] The transcript has a blank space here.

[xxii] Strauss clearly has in mind *Leviathan*, chapter 13, but much of what he says here applies also to *De Cive*, preface and chapter 1.

[xxiii] The transcriber notes that this represents the gist of an otherwise inaudible speech.

Student: If the ultimately significant factor is equality, if the price of equality is self-preservation, we might in a way push self-preservation back one step; or maybe this is another way of saying the same thing, that all men are equal by birth, because birth presupposes the perseverance of being, in the sense and [. . .] may be right from the Declaration of Independence, that all men are born equal, are created equal.

LS: But the question is whether there must be something effective. You see, the whole construction does not work except under one condition, one presupposition: that there is something common to all men which is generally speaking the most effective, the most powerful passion in all men. That would not yet follow from the equality of birth. You have to indicate the specific thing which actuates men, motivates their action. That is the point.

Student: . . . mention the fact . . . Hobbes in the *Leviathan* in the chapter on equality. He does not quote another source . . . He goes into the problem of equality . . . And the fact that Locke leaves out demonstration of equality would seem likely[21] [to be of][xxiv] significance in[22] relation to the *Leviathan*. He may be very careful and cautious in his own way of writing, in not wanting to write something which was very hard to approach without paralleling Hobbes or what Hobbes had written earlier.

LS: I am not sure whether I understood you. Do you mean to say that the *Leviathan* is meant to be a strictly philosophic or scientific book?

Student: No, what I meant to say was the reason that Locke purposely left out the demonstration of equality . . .

LS: Well, he conceals his whole argument in this way. But a careful study of the *First Treatise* alone would show that self-preservation is *the* fundamental and most powerful thing; whereas you get first the impression that the desire for procreation, for the preservation of the species, is more important and more powerful, it later on comes out that the main thing is self-preservation. Mr. —— made this point, that when Locke says this, he speaks only of human beings, and not of other animals.

Student: What I meant was that by leaving it out, it actually shows a closer relationship between Hobbes and Locke.

LS: Yes, one can say that, but it is not—how can I say that?—a very elegant argument. It presupposes certain things. If you establish first that Locke conceals the most important things, then every concealment becomes important. But you have to establish this major premise first. That *must* be established. One must not take it easily. Now let us go on where we left off. So "not only to preserve his property—that is, his life, liberty and estate."

Reader:[23]
but to judge of and punish the breaches of that law in others as he is persuaded the offence deserves, even with death itself in crimes where the heinousness of the fact in his opinion requires it.[xxv]

[xxiv] The transcript has ellipses here.
[xxv] *Second Treatise*, sec. 87.

LS: One moment. Locke in this part of the book derives the power of government entirely from one right, the right of every individual "to judge and punish the breaches of natural law." But there were two rights which every individual had in the state of nature. Do you remember them? What was the other? The right of taking reparations. We have discussed this. The right of taking reparations is much more immediately connected with the right of self-preservation than is the right to punish breaches of the natural law. Locke here—later on he will change that, but in the beginning of the argument, Locke tries to link up the power of government entirely with the more respectable or the more unselfish right which man was said to possess in the state of nature. You notice also here the expression, "the heinousness of the fact *in his opinion* requires it." His opinion alone is decisive. Therefore, he can later on use the expression "as he thinks fit," which is in no way different from what Hobbes wrote. In the state of nature, everyone can preserve himself by all means which he thinks fit. Once this is admitted, the war of everybody against everybody necessarily follows. Now the next two sentences.

Reader:
But because no political society can be, nor subsist, without having in itself the power to preserve the property and, in order thereunto, punish the offences of all those of that society, there and [there] only[24] is political society where every one of the members hath quitted his natural power, resigned it up into the hands of the community in all cases that excludes him not from appealing for protection to the law established by it.[xxvi]

LS: By the way, is not "excludes" a misprint for "exclude"? Yes. Or does it make sense?[xxvii]

Student: It could be the community which excludes.

LS: But what sense would it make? Is not "that" dependent on "the cases"?

Student: I think it refers to "resigned it up." That act.

LS: I don't know. I don't say that it must be changed, but I wonder whether the natural construction is not that the "that" refers to "cases." But later on—the immediate sequel.

Reader:
And thus, all private judgment of every particular member being excluded, the community comes to be umpire—[xxviii]

LS: Look at this astonishing statement. Of course, you can say from the context it means all private judgment regarding punishment, but Locke does not qualify it. Does not Locke then also imply—this is merely a question—that fundamentally, subjection to the civil government, to the community, means in principle the submission of all

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[xxvi] *Second Treatise*, sec. 87.
[xxvii] Note that Laslett prints "exclude."
[xxviii] *Second Treatise*, sec. 87.

private judgments of every particular member? In practical terms, that such things like toleration are derivative from a law, a positive law, establishing toleration? A wise law, in Locke's point of view. But is not the community, as far as its natural right goes, entitled to decide *all* these questions? There is a remark in the beginning of the next paragraph: "And thus the commonwealth comes by a power to set down what punishment shall belong to the several transgressions which they think worthy of it committed amongst the members of that society—which is the power of making laws."[xxix]

What *they* think worthy of punishment, or also, of course, of [. . .] That would amount to[25] [the] position taken by Willmoore Kendall in his book on Locke, that the submission of the individual to society is no less radical in Locke than it is in Rousseau.[xxx] And from this point of view the extreme statement, "all private judgment of every particular member being excluded," might very well have to be taken literally. Locke only believed that if the community is properly constructed, i.e., that everyone has a say, by virtue of a proper electoral law and this kind of thing, then automatically this would be a free society and the majority would not exercise tyranny.

Student: Wouldn't the individual still retain his right to judge his liberty in civil society?

LS: Yes. In other words, he can leave the community. But if he would stay in the community and refuse to obey the law, the others would withdraw the protection of the law from him.

Student: Supposing that the law is unjust.[xxxi]

LS: Yes, but what can he do? He will be in the state of nature again and have the whole society against himself. Then he is an outlaw. The community would say: Well, we do not call these people outlaws; we simply treat them as criminals of a certain kind. You can call it high treason or whatever it may be, and you can make it a capital offense. If he says, "I am not subject to this legislation," they would say, "All right, but you are in the state of nature with us: you are our enemy, and we can treat you as such." In other words, it is strictly speaking a state of hostility and it is not the state of a criminal subject to the law. That was the way in which Hobbes took care of this problem. At any rate, the main point you have to make is this: there is presupposed the subjection of every potential member of the society to the community. That is the first point. I note one point as an indication: it is possible that Locke means that the *political* society excludes private judgment necessarily, whereas the other associations, the prepolitical or subpolitical associations, do not.

But let us come back to the more immediately important problem. You recall the Aristotelian question: What makes a political society one? Do you remember the Aristotelian answer? What makes a city one in the last resort, fundamentally? Not the location and so forth, not the walls. What was that?

[xxix] *Second Treatise*, sec. 88.
[xxx] Willmoore Kendall, *John Locke and the Doctrine of Majority Rule* (Urbana: University of Illinois Press, 1941).
[xxxi] The transcriber notes that this represents the gist of an otherwise inaudible speech.

Student: [The common good.][xxxii]

LS: But more specifically. That must be embodied to be effective. *The regime.* The political order, the regime, makes the city one. Locke seems to deny that. He seems to assert the community makes it one. You see, at the last sentence, I think, he says: "whereby it is easy to discern who are, and who are not, in political society together. Those who are united into one body and have a common established law and judicature to appeal to . . . are in civil society with one another."[xxxiii]

But you see also: "the common established law and judicature." The question is whether every human law is not necessarily dependent on a human legislator—every human law—and whether the human legislator is not radically different in different regimes—say, in oligarchy one, and in democracy [another]—and so whether the unity of civil society does not depend merely on the community, say, the English people, but also on the regime itself. We must keep this in mind. In other words, the question: What is the relation of community and government? Is there according to Locke a community prior to government?

From this remark which I read to you in the beginning of paragraph 88, on page 164, top, you see the community is the judge of what they think worthy of being regarded as a transgression. That implies of course that the community certainly can establish the kind of marriage law, for example, as it sees fit, especially if such prohibitions as those against incest and so are not strictly speaking natural law prohibitions. And why is that so? Answer: Because the end of this activity of civil society is to preserve the property of all the members of the society as far as possible. Now take the broad view of property that includes life and liberty. That would still leave open to the complete discretion of the legislature[26] whether and what they will stipulate regarding such things as the family relations insofar as they do not affect property.

In the sequel Locke makes clear, much clearer than Hobbes ever did, the duty of military service as a corollary from the meaning of civil society. I enter civil society in order to secure myself, but therefore I am compelled to contribute to that process of security which is in fact military service.

In the middle of paragraph 89, you will find an identification, "the society or, which is all one, the legislative thereof." For practical purposes, the society and the legislative are the same. For almost all practical purposes. We must see later on what that means.

In the sequel, as Miss —— pointed out, Locke shows that absolute monarchy is incompatible with civil society, because the absolute monarch necessarily remains in the state of nature: no writs against the king.

Here[xxxiv] we have again two Hooker quotations, and it is always wise to look them up in the context. I mention only one point which is characteristic. In the note 3, Locke makes an insertion in the Hooker quotation, "To take away all such mutual

[xxxii] Brackets in original transcript.
[xxxiii] *Second Treatise,* sec. 87. In the original the end of the sentence reads "are in civil society one with another."
[xxxiv] That is, in the notes to *Second Treatise,* secs. 90 and 91.

grievances, injuries and wrongs." Locke adds, "such as attend men in the state of nature." Hooker had not spoken of the state of nature. You see also what Locke achieves by that. He gets, as it were, a Hookerian formulation, not a Hobbean formulation, of how the state of nature looks: not that state of peace of which he had spoken in chapter 3, but it is rather a state of "mutual grievances, injuries and wrongs." Now neither Locke nor Hooker says that the state of nature is characterized by mutual grievances, injuries, and wrongs, but by the combination of these two things which Locke achieves, *someone* says it. He knows that there is someone else who *did* say it, but he is not mentioned because of his bad reputation.

There are some other points in Hooker, I thought, which would be quite interesting. If we look[27] up the context, Hooker says here in the same content, giving examples of the bad times which were prior to the establishment of public regiments; there he refers to the period prior to the Flood.[xxxv] This indicates again the problem of where is the historical place of the state of nature according to Locke. Note also that Hooker says in the passage, "Men always knew . . . that however men may seek their own commodity, yet if this were done with injury unto others, it was not to be suffered, but by all men and all *good* means to be withstood."[xxxvi] Hobbes had robbed the goodness: "by *any* means." Locke did not reassert the good means, clearly.

The most interesting thing, however, is in the sequel. "Finally, they knew that no man might in reason take upon him to determine his own right,"[xxxvii] whereas Locke says, in the state of nature everyone has the right to take upon him to determine his right, and to find his redress for the reparation and the punishment. So here, this is a very important point.

Also in the same context, I quote from Hooker: "To fathers within their private families nature has given a supreme power."[xxxviii] Here Locke does not quote Hooker. You see, that is an extremely selective view. One could perhaps give an interpretation of Locke's teaching entirely in terms of the passages from Hooker which Locke quotes and [those] which he does not quote. That would be perfectly sufficient for finding the really essential differences.

In the next two paragraphs, Locke speaks more clearly of the state of nature than he did before. For example, in the middle of paragraph 91, at the top of page 166, "all the inconveniences" of the state of nature. There must be plenty of them: "all the inconveniences." And at the end of paragraph 92: "He that would have been so insolent and injurious in the woods of America would not probably be much better in a throne." But "the woods of America": you remember this passage, "in the beginning all the world was America." That is, the state of nature.[xxxix] So people are insolent and injurious in the state of nature. It is an unrestrained state of inconvenience. The difference between Hobbes's and Locke's state of nature becomes ever and ever smaller.

[xxxv] Hooker, *Eccl. Pol.*, 1. 10. 3.
[xxxvi] *Eccl. Pol.*, 1.10. 4; quoted at *Second Treatise,*, sec. 91, note 3. Strauss's emphasis.
[xxxvii] *Eccl. Pol.*; quoted at *Second Treatise*, sec. 91, note 3. The original has "yet if this were done with injury *to* others" (emphasis added).
[xxxviii] *Eccl. Pol.*, 1.10. 4.
[xxxix] *Second Treatise*, sec. 49.

In paragraph 93, as Miss —— observed, there is now suddenly a reference to charity, a virtue not otherwise mentioned in this treatise, and certainly not mentioned in the chapter on property.

In paragraph 94, this amazing statement at the end of the first sentence, "that safety and security in civil society for which it was instituted, and for which *only* they entered into it." For no other consideration. The security includes security of property, but still that does not alter the fact.

You see also in line 2 from the bottom of page 167, "the negligent and unforeseeing innocence of the first ages."[xl] Now these were not ages in which people could be studiers of anything, and therefore of the law of nature in particular. That goes together: the state of nature is a state of scarcity, a state of poverty, a state of great inconveniences, and therefore a state in which people could not acquire that knowledge which is indispensable for knowing the law of nature. In other words, the state of nature could be a state ruled by the law of nature only if the men living in the state of nature could possess such knowledge. But since there is no implanted knowledge of the law of nature, [since it is] only acquired by a very complicated process of theoretical reasoning, there could not have been any knowledge of the law of nature. The law of nature could not have acted as a restraint. But there could have been some restraint: the restraint exercised by simplicity and poverty. But that is of course not a moral limitation, strictly speaking.

Now in the last paragraph, seven lines from the end: "'No man in civil society can be exempted from the laws of it' [a quote from Hooker—LS]; for if any man may do what he thinks fit . . . I ask whether he be not perfectly still in the state of nature."[xli] The state of nature is a state in which any man may do what he thinks fit.[28] Take even the most strict construction and say he may only do what he is prompted to do by the need of self-preservation, but [even so], since he alone is the judge of what is conducive to self-preservation, and he may regard anything as conducive—perhaps out of stupidity or lack of good judgment[29]—he may regard anything as a means for his self-preservation. Therefore, in fact he may do what he thinks fit. That is again the Hobbean answer.[xlii]

Student: . . . "appointed" and "approved" changed in Hooker.

LS: So here[xliii] Locke deliberately changes Hooker's "approved" to "appointed." Does this make any sense to you? The word "appointed" occurs in one important passage, in paragraph 13, on page 127, where Locke says, in reproducing an argument of another man: "God hath certainly appointed government to restrain the partiality and violence of men." And he does not refer to the divine appointment of government in his rejoinder. The whole argument of Locke's presupposes that government is *not* divinely appointed. How does this appear? What you said in your paper, Miss ——, I would say the major thesis of your paper is only a different formulation of this same thing. If government is divinely appointed, then you are not at liberty to simply withdraw from subjection to government. You are under a moral obligation to enter

[xl] *Second Treatise*, sec. 94.
[xli] *Second Treatise*, sec. 94.
[xlii] There is a break in the tape at this point.
[xliii] That is to say, in the first note of *Second Treatise*, sec. 94, which quotes *Eccl. Pol.*, 1.10. 5.

society, and that means to be subject to the government. But Locke, by saying an individual reserved this right to withdraw from society, and therewith from subjection to government, denies of course the obligation to be subject to government. In paragraph 95, I think that becomes very clear. In the first paragraph, next chapter, when he speaks of civil society in the middle of the paragraph, "This any number of men *may* do," to join society. He does not speak of any *obligation* to do it. You see also that he uses in the sequel, "When any number of men have so consented to make one community or government . . . " While the distinction between community and government will be made by Locke, for practical purposes the two are inseparable. There is only one practical difference between community and government, and that is revolution, as we call it today. We will come to that subject later.

In the next paragraph, 96, Locke develops the majority principle. This majority principle is here presented: "it being necessary to that which is one body to move one way, it is necessary the body should move that way whither the greater force carries it, which is the consent of the majority."[xliv] The majority principle is here presented as a natural law which man cannot transgress. You remember this distinction which we made before. But this is of course not too simple, otherwise the majority principle would be valid everywhere. It is a kind of conditional necessity. In what way, we must try to see.[30]

The argument is this. You form a community, a society, consisting of many men of different wills in every respect, only united in one will: that there should be the society. But for almost every other question there is already no longer any unanimity. How is the will of the community to be established? Locke answers: By the majority. Why is this so? Ultimately, because of the greater force of the majority. Now you referred to military technology affecting this considerably. But one could say that these differences—one has a machine gun, and the other only sticks—could not one say that this is already a conventional difference, a difference due to[31] the high development of civil society and not belonging to the natural situation? Could one not say that?

Student: Even if they only had their hands to fight, you could still conceive easily of the minority gaining the majority by various ruses and that kind of thing. Or simply by greater strength.

LS: And courage. Sure. But how then can one defend it as Locke meant it? Well, what about the question of right? If all are equal in right, right of self-preservation, could one then say that there is a greater right—disregarding the substantive value of the proposal, but merely, as it were, the quantitative summation of right on both sides—say, the greater accumulation on one . . . But Locke, interestingly enough, does not refer to that. You see, you can say this: All other things being equal, but the numbers being unequal, the position must be [that] the inequality of numbers is derivatively the decisive consideration. Think of an innocent unpolitical thing: a group of people, of friends, not knowing what to do; and the two proposals, to go play A or to go play B, neither having an objective or a substantive superiority.[32] [Given] that the majority wants [A] and the minority wants [B]—disregarding again all complicating factors like the wise minority or the unwise majority, is it not reasonable

[xliv] *Second Treatise*, sec. 96.

to say, “Let the majority have it”? There is a certain natural plausibility in the principle of the majority, with these qualifications—I mean, here the premise of the equality of all, and no one being subject to anyone else but everyone subject to the community as a whole. Should not the numerical majority of the community have the right, the alternative being the dissolution of the community? That is the point: You have no choice, Locke says, between anarchy and majority rule. Then it is sensible to prefer the majority. The question of safeguards against a misguided majority of course comes up, but we are now speaking of the first element of this, the first element of the whole problem. But it is all the more remarkable that Locke does not refer to this equality of everyone,[33] [on the basis of which] one could say the majority has a greater weight than the minority, a greater moral weight, but [rather] to the greater *force* of the majority.

In Spinoza also this consideration of the sheer force of the greater number plays a very great role. That is so very true: a minority might defeat a majority, even disregarding military implementations and all that kind of thing. But what about the distribution of strength and weakness? Or rather, let us put it this way: What is[34] the most important divisive factor in society? I mean, in all society, according to an old view, establishing a majority and a minority.

Student: The rich and the poor.

LS: Yes. Now if you look at that, then you see that there is no essential connection between rich and strong, or weak and poor. You can make this objection, of course: This brings in prudential considerations of great political importance which have no proper place in such a simplistic preservation of a natural right. I don’t remember now how Hobbes argued. I believe fundamentally his argument is this: Either you have the majority principle or anarchy; then, since it is assumed in this part of the argument that community is necessary, you have to accept the majority principle.[xlv] But I believe in this century the thought [is] that if there were not the conventional distribution of physical power, namely, the means of control, of physical control, are in the hands of government—if you disregard that [and], in other words, go back to the state of nature, then the majority, and especially an overwhelming majority—I mean not five[35] [against] twenty but, say, one hundred against one hundred thousand—the overwhelming majority would of course be physically stronger. But it is certainly a very doubtful way to argue.

Now let us see. Locke makes it clear in paragraph 97 what that original compact is. And here he follows Hobbes entirely.[xlvi] The original compact is a compact of every individual with every other individual. It is not a compact of a people with the government. It is an obligation of every individual toward every individual. We may add also, it is an obligation of every individual to every individual and *not* an obligation of the human individual over against God, because that would mean God has appointed government and therefore everyone is obliged with a view to God to obey the government, or to remain a member of society. The obligation is a strictly intrahuman one.

[xlv] Strauss perhaps has in mind *Leviathan*, chap. 18: “and whether his consent be asked, or not, he must either submit to their decrees, or be left in the condition of warre he was in before.”

[xlvi] See *Leviathan*, chaps. 17, 18.

I would also like to say that Locke uses here—you see the special clarity in paragraphs 98 and 99—Locke uses the terms "society" and "civil society" here as synonymous, which means that the state of nature, which is a state distinguished from that of civil society, is as such presocial. Again as in Hobbes.

In 99 we find a most important reference to a problem which becomes later on important, namely, that of constitution. Here[36] [there] is only the first reference to that, where he says: "And thus that which begins and actually constitutes any political society is nothing but the consent of any number of freemen capable of a majority to unite and incorporate into such a society."[xlvii] But that is only the first reference to the problem, which will be taken up later on at greater length. I would only like to state what the argument regarding constitutional government amounts to. It amounts then to this equation which later became trivial: legitimate government is necessarily constitutional government. In the theoretical doctrine that meant originally [that] legitimate government is necessarily constituted government, a government which is based on an explicit constitution, like the American Constitution. That is underlying the famous discussion between Tom Paine and Burke, where Burke takes an old notion of constitution and Tom Paine defends the modern view, namely, that there must be an act, or the equivalent of an act, where the society deliberately constituted itself—or at any rate, immediately after having constituted itself as constituted government, assigning to the government or to parts of the government these and these functions.[xlviii] But we will come to this subject later.

In paragraphs 101 to 112, Locke tries to prove that the state of nature was and always can be active. So Locke certainly was not of the opinion that the state of nature is merely a hypothetical construction. In paragraph 101 there is a reference to the Jewish commonwealth, where he says the Jewish commonwealth is fundamentally different from all others because God himself immediately interposed. You see that in this paragraph he also refers, suddenly, to Salmanasser or Xerxes. I do not believe he meant this old Salmanasser,[xlix] but Salmanasser the Fourth, who conquered the northern part of the Jewish kingdom, Israel, in 772 BC; and Xerxes is most famous for having been defeated by the Greeks. That was an old theme: the political ineptness of the Jewish commonwealth compared with the political greatness of Greece and Rome. Xerxes may also be, for all I know, the Persian king who plays such a great role in the biblical book of Esther. He is of course called by a Hebrew version, Ahasuerus—but that was in fact, according to tradition, Xerxes.

In paragraph 102, I refer you to this passage, four lines before the end: men were "by *consent* . . . all equal till by the same consent they set rulers over themselves." Now should equality be based on consent—should equality be itself contractual? How would you understand that? I mean, granted that all men are by nature equal by virtue of their desire for self-preservation. But there is this state of inconvenience, of hostility, of war, and a certain part of the people may subjugate the others by main force, justified by their desire, by their need for self-preservation. They may do that. But if they refrain from doing so, is this not an arbitrary act? And would, from this

[xlvii] *Second Treatise*, sec. 99.
[xlviii] That is, the debate between Paine and Burke over the French Revolution and its relation to the Glorious Revolution of 1688. See Paine's *The Rights of Man, Part 1*.
[xlix] This Salmanasser is the one identified by Cook at 171n 2 in the Hafner edition.

point of view, the recognition of the equality of every member of the association be a consensual one? Certainly a remarkable passage. You could also say this, that since there are natural inequalities, as Locke has said more than once, to regard men as equal in spite of the fact that they are unequal in important respects is also an act of consent, contract, or rather of convention. I refer you to paragraph 104, where Locke[37] [says] , "the governments of the world that were begun in *peace* had their beginning laid on that foundation." There were, then, governments which began in war. Locke refers to that subject in paragraph 112, end. In other words, the question of governments that began in war has to be considered carefully in order to get the full picture of what Locke saw[38] [as] the beginnings of government.

The next three paragraphs, 105 to 107, are a repetition of paragraphs 74 to 76. There are some differences which I should like to mention; for example, in paragraph 105, page 173, in the center, where he speaks of "the father, having by the law of nature the same power with every man else to punish as he thought fit any offenses against that law, might thereby punish his transgressing children even when they were men and out of their pupilage." Still more so of course when they were children. This leads us to raise the interesting question, whether the power or right of the father is not simply an application of the fundamental right of self-preservation to a particular case, to the case in which the one man is grown up and the others are small.

The other point which I note here in this connection is from paragraphs 108 and 109,[39] which is prepared by 105 [to] 107[l]: he speaks first of the red Indians: "the kings of the Indians in America, which is still a pattern of the first ages in Asia and Europe." Then at the beginning of paragraph 109: "And thus, in Israel itself." There is no fundamental difference between America and Israel in this respect, as you can see. Now you did not investigate the biblical passages, did you?

Student: Yes, I looked them up.

LS: And what did you notice there?

Student: It seemed to be pretty much in order. I used first the more modern translation . . .

LS: That probably would not affect the issue. The question is this . . . There is of course no popular election of the kings in the Bible.

Student: No. [. . .]

LS: Well, there are a few passages . . . I note it only because of this connection between paragraphs 105 to 107 and 74 to 76. I reread the paragraphs and I found a very strange passage which I would ask you to consider, whether you can find an understanding. That is page 157, bottom: "whilst they remained in it."[li] What that means I am unable to explain. Whilst they remained in *what*? That I do not know. That may have some bearing for the understanding of this repetition, which however I cannot tell.

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[l] In the transcript: [? 105 to 107]

[li] *Second Treatise*, sec. 74.

Regarding[40] the biblical quotations in paragraph 109, I only know this, that when he introduces on page 177 the passage of I Samuel 8:14,[lii] one gets the impression that God said this: "And when God resolved to transfer the government to David, it is in these words . . ." It is in fact said by Samuel. Now if you reread, [or] read, in the light of this passage, I Samuel 8:1-7, one gets an idea of how Locke probably interpreted this crucial biblical passage regarding the introduction of kingship in Israel.

But I see it is already somewhat late. I mention only the most urgent points. Here in paragraph 110, he calls this first age, "that poor but virtuous age." Do you have that passage? In the middle of paragraph 110 on page 177. And then he goes on to say, "such as are almost all those which begin governments that ever come to last in the world." "All those" must mean ages. Now that is of course of crucial importance, that there is not simply *the* state of nature, there are in principle many states of nature. Whenever there is no established government, there is a state of nature. This has to be taken into consideration for the understanding of this great question of the relation of the Lockean state of nature to biblical history. It was a "poor and virtuous age."

In paragraph 111, he speaks then of the golden age. Here you see the golden age "had more virtue, and consequently better governors, as well as less vicious subjects." Now if there is no government in the state of nature, must not the golden age be different from the state of nature? Which is reasonable in Locke for a number of reasons, but which would seem to be here of concern by the explicit wording. At any rate, there is an age in which poverty and virtue go together. That was an earlier stage. But what about if we take the other assumption, that this is the state of nature: What would be the state of civil society? I think that is even clear from this passage: the age of wealth and vice. That can be given a perfectly simple interpretation. A younger contemporary of Locke was Mandeville, who wrote *The Fable of the Bees: Public Vice and Private Benefit.* The thesis was that private vice is conducive to public benefit, say, to wealth.[liii] From this point of view, there is no difficulty in understanding Locke's point of view.

I am sorry, I have to drop that . . . I note only the remark in paragraph 116, in the center, to which Miss —— referred, that in civil society we still seem to have the freedom of the state of nature. We are not under an absolutely binding moral obligation to remain in civil society, or to be subject to government. That is a conclusion of the radically voluntary kind of civil society.

I am sorry, I have to leave.

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[1] Deleted "inclusive."
[2] Deleted "say."
[3] Deleted "he."
[4] Moved "Locke." Deleted "here."

[lii] Strauss means 1 Samuel 13:14.
[liii] Bernard Mandeville (1670-1733), Dutch-born physician and philosopher, who lived most of his adult life in England and had a major impact on English moral thinking. In 1705 he published his poem *The Grumbling Hive*, in which he first put forward his idea that public good depends on private vice. In 1714 he published *The Fable of the Bees*, a prose interpretation and explication of the basic ideas in his poem. He published an expanded edition of the latter book in 1723.

[5] Moved “clear.”
[6] Deleted “that.”
[7] Moved “Now the question arises” at beginning of next sentence.
[8] Deleted “and.”
[9] Deleted “he speaks.”
[10] Deleted “relation.”
[11] Deleted “you would have here.”
[12] Deleted “may—.”
[13] Deleted “refers.”
[14] Deleted “occasionally.”
[15] Deleted “the.”
[16] Deleted “him merely.”
[17] Deleted “and therefore.”
[18] Deleted “they.”
[19] Deleted “and.”
[20] Deleted “they.”
[21] Deleted “a.”
[22] Deleted “the.”
[23] Deleted “[page 163, paragraph 87].”
[24] Moved “there.”
[25] Deleted “this.”
[26] Deleted “as to.”
[27] Changed from: “If we look up this in the context of Hooker, Hooker says here in the same context, giving examples of the bad times which were prior to the establishment of public regiments, there he refers to the period prior to the flood.”
[28] Deleted “If you.”
[29] Deleted “but.”
[30] Deleted “But” at beginning of next sentence.
[31] Deleted “the existence of.”
[32] Deleted “Would not the fact.”
[33] Deleted “and therefore.”
[34] Deleted “is likely to be, what.”
[35] Deleted “to.”
[36] Deleted “that.”
[37] Deleted “speaks.”
[38] Deleted “of.”
[39] Deleted “where he.”
[40] Deleted “the quotations.”

On Locke's *Second Treatise*, chapters 9-13
Session 14: March 5, 1958

Leo Strauss: [In progress] . . . but the defect which we share, that English is not our mother tongue, affected the paper considerably, and one notices this kind of defect much more in others than in oneself.[i]

Now I come to the most important points you made. You have seen very clearly this great difficulty in Locke's teaching, which is not generally known. The only author I know who has stressed it properly is Willmoore Kendall, in his book on Locke and the majority principle, where he goes so far as to say that Locke was unqualifiedly majoritarian, and nothing of a liberal.[ii] Now that is not so simple. The liberalism is also there. There is a serious tension, there is no question. Now you said that Locke from a certain point on simply substituted the people, and that means in fact the majority, for the individuals, and I fully agree with you.

But what conclusion did you draw from the example of the soldier sent to march[1][into] the[2] [mouth of the cannon]?

Student: Well, there were two. The main one was this, that insofar as Locke was implying that the preservation—I mean, he said that a general ordered him to fight but he could not keep [a farthing of his money],[iii] which means that property is of greater importance than [victory].

LS: No, you cannot conclude that, because that is a special situation. It has no relation to victory whatever whether the sergeant or the general deprives the soldier of his money, whereas the victory may very well depend on the soldier giving up his life. That is not—these inferences were unwarranted, but we come to that. I notice only that in this connection .. .

Student: . . . Although I'm sure most people disagree, Locke in a way makes a definite contradiction between the individual's right of self-preservation and society's right of forcing the individual to enter the war, thus endangering his self-preservation . . .

LS: No, that is not—

Student: . . . it is really the sacrifice of the individual's self-preservation to the community's self-preservation.

LS: That there is a difficulty here I grant you, but whether the duty of military service and its implication, possible death, really contradicts it can be doubted, because Locke can rightly say, as he suggests, that the danger of being killed, of being prevented from preserving himself, is still much smaller in civil society, since wars do not take place all the time and since not every member of the community goes to war, than it would be in the state of nature. In the state of nature, we all would be dead because of the war of everybody against everybody, whereas in the state of civil society only a very small percentage of the people,

[i] Strauss responds to a student's paper, read at the beginning of the session. The reading was not recorded.
[ii] See session 13, n. xxx.
[iii] In the original transcript: "inaudible"; words in square brackets have been supplied by the editor.

and not in every generation, is killed in war. That I don't believe. I mean, there were certain points by which you weakened your otherwise strong argument.

I noted in connection with this remark about the soldiers—you became aware of the fact, but again you did not follow it up sufficiently—that Locke does make a distinction between arbitrary power and absolute power, and so one of the two is necessary in civil society. We don't know whether it is absolute power or arbitrary power, we must see that.

You linked this whole question, the question of the individual and society, up with the question of the contract, and you said it is so obscure what kind of contract Locke admits; and I would say that there is no question that there is only one contract for Locke, and that is the contract between individuals establishing societies. There are no further contractual relations except very uninteresting ones, which the government makes with the builder of a house, for example.

You referred to paragraph 149. That was your only reference. What is there about contract?

Student: You must have the wrong paragraph.

LS: No. I can see what happened to you. You took a trust or a fiduciary power to be a contract. That is not a contract. There is no contractual relation between the community and the legislator.

Student: How then would they originate land?

LS: By a grant. By appointment. It is an absolutely one-sided act, if the community grants the power to make laws to a few or to one. You may even say it may grant this power to itself. A contract presupposes some equality of the two contracting parties. The legislative is a mere creature of the community or society.

Student: I know what you mean, but isn't there somehow—I don't see where there is any significant difference. I mean, if someone is appointed, he admits an implicit contract with the appointer, namely, to certain duties and so on which go on in any social relationship.

LS: The utmost you can say is this: since this is a grant during good behavior, the community undertakes not to revoke that grant unless the grantee misbehaves. Still, it is not technically a contract because it is still a clear relation of a grant, a free grant; there is no inherent right in the legislative. You can say perhaps that the legislative, by virtue of this fiduciary grant, acquires a right to be kept in power if it behaves well. That you could do. But still it is important to note that Locke does not call it a contract.

The fundamental issue which you raised and which you stated quite well,[3] [is]: Why not a return to the state of nature instead of a mere return to a governmentless community? Locke doesn't speak of that return to the state of nature here, but he admitted that earlier. We discussed that last time. But Locke did not want to open up all possibilities of disintegration when they are unnecessary. In other words, if the situation is very clear, [if] you have an oppressive government, why should you go back to the old inconveniences in the state of nature if a little revolution takes care of all your problems?

Student: It is not just government which can be wrong and therefore which can be abolished, but the society as a whole can also violate that original contract between the individuals in the case where one part of society enslaves another part.

LS: Well, you mean that the majority can be tyrannical?

Student: Yes.

LS: Is there any provision in Locke against the tyranny of the majority? I believe not. That's true.

Student: Locke's conclusion from this would be the right of the strong minority to dissolve the society if they are capable of it.

LS: How does this follow?

Student: The original contract between the individuals was made on the basis of mutual self-preservation. Then, when society violates that contract with some of its members, then those members, if they are capable of it, have a right to reclaim their old rights and reestablish a state of nature if they are capable of it.

LS: Let me try to follow another part of your argument. I see your difficulty. If we state the difficulty as follows. There is no guarantee in Locke against the tyranny of the majority; then I would first raise the question why he did not think of that. And the answer would be that Locke did not regard such tyranny as the important danger, and that he regarded the important danger as tyranny exercised by one or few, and he provided for these contingencies reasonably well. Therefore he must have had some trust, founded or unfounded, in the majority. We may come across some passages in the chapter on dissolution of government wherein most of the common people, the mass of the people,[4] are not by themselves oppressive. Incidentally, the examples you give of such situations in Germany[5] do not prove the tyranny of the majority. The tyranny was really by a minority. No, even if the government had a legal majority at the time it came to power, it is still a question whether the policies executed by Hitler were those—if the policies had been put to a free popular test, you know what would have happened. That one must say. One must make a distinction between—if one uses that term—the totalitarianism of government and the totalitarianism of society. These are two different propositions. I do not deny the serious dangers of majority tyranny, but I believe they are really less great than very compact powerholders who successfully prevent any expression of popular malcontent.

Student: This brings out what I had in mind, that it isn't necessarily the danger of the majority, but just as much a danger of a powerfully organized minority.

LS: Yes, but that is clear from Locke's point of view. That is irremediable as such, but there is no way from Locke's point of view to stigmatize an act of the majority which has the form of law. We come to that later. But I'm grateful that you brought up these questions.

Now only on one point I disagree with you, what you have said about paragraph 132, beginning, that Locke did not show that[6] the majority had such a power. I think he did show it. Paragraph 132, beginning of chapter 10: "The majority having, as has been shown, upon men's first uniting into society, the whole power of the community naturally in them." Locke

shows this by the argument proving if there is no such power in the majority, society cannot exist. We discussed this last time. So I think one would have to revise what you said on this point.

Now let us turn now to a somewhat coherent discussion of these four chapters. Here a great difficulty arises of the end of political society and government, because this question has been answered before, clearly or not. I refer you to the example on page 167, paragraph two. That is paragraph 94: "to have that safety and security in civil society for which it was instituted, and for which only they entered into it."[iv] Or: "secure enjoyment of their properties and a greater security against any that are not of [that society—LS]."[v] So the ends of government have been perfectly established. Why does he speak of it again? But you see here that he uses this strange expression, "of the ends of political society and government," and later on at the beginning of the next paragraph, 124, he says, "the great and chief end," which might mean that there is also a small and subordinate end; at any rate, a variety of ends. That is very strange. Are there any other ends? Well, in the first place one could find here a reference to these really two different ends, to which Mr. —[vi] referred, the self-preservation of the individual and the common good, which are not simply identical, which are not necessarily in conflict but which may conflict. But there is also the other point to consider. Very strangely—look at the heading of chapter 8, that is on page 168, which is "Of the Beginning of Political Society."[vii] And that is very naturally followed by the chapter on the end of political society, but the funny thing is that if you read this chapter 8 again and look at paragraph 101 end, on page 171: "And those [records—LS] that we have of the beginning of any politics in the world, excepting that of the Jews, where God himself immediately interposed, and which favours not at all paternal dominion, are all either plain instances of such a beginning as I have mentioned, or at least have manifest footsteps of it."[viii] In other words, there are two beginnings, not only one: the divine beginning and the human beginning. So he should really have called it "Of the Beginnings of Political Society" and "Of the *End* of Political Society," but he did it just the other way around, but still we are able to find it.

Now you see we are here now practically in the middle of the *Second Treatise*. You find here this enormous statement at the beginning of chapter 9, where man is said to be the "absolute lord of his own person and possessions, equal to the greatest, and subject to no one, why did he part with his freedom? Why did he give up his empire and subject himself to the dominion and control of any other power?"[ix]

Man is the "absolute lord of his own person and possession." That is the strongest statement of the absolute sovereignty of the individual which occurs in the *Treatise,* I think. Note also that he speaks here of person and possessions, not of property. At the end of the paragraph he takes up the question of terminology and says, "life, liberties, and estates, which I call by the general name 'property'."[x] Now we have this difficult passage on page 148, paragraph 57,

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[iv] *Second Treatise*, sec. 94.
[v] *Second Treatise*, sec. 95.
[vi] The transcriber notes that this is the student who read a paper at the beginning of class.
[vii] The title in the original is "Of the Beginning of Political Societies."
[viii] *Second Treatise*, sec. 101. Where Strauss says "records," Locke writes "those."
[ix] *Second Treatise*, sec. 123. In the original: "subject to nobody, why will he part with his freedom, why will he give up his empire"
[x] *Second Treatise*, sec. 123. In the original: "lives," not "life." In the passage that Strauss goes on to quote, the original has "person," not "persons."

towards the end, where he says: "persons, actions, possessions, and his whole property." What should this "whole property" be after he has already enumerated the other things, persons, actions, possessions? Now actions can very well stand for liberty, because for Locke liberty is, just as for Hobbes, a liberty of action and not of willing.[xi] That is easy to understand. But which parts are omitted? What do you think? Well, if one looks back to classical usage, with which Locke was of course familiar, there is a very common distinction of three things: actions, speeches, and thoughts. I submit to you this consideration: whether and to what extent the speeches and thoughts of men are here implied in his whole property, as distinguished from his possessions in general. I leave it at this.

If we return to paragraph 123, we have in the center of this paragraph the statement: the greater part of men "are no strict observers of equity and justice, [and therefore—LS] the enjoyment of the property he has in this state [the state of nature—LS] is very unsafe, very unsecure."[xii] You see, he is repetitious if he wants to be, because "very unsecure" doesn't add anything to "very unsafe"; but on the other hand, he is very silent. Is only his property so unsafe in the state of nature as it is now described? What about his life? Well, you can say that "property" always means this general thing. Sure, you can say that. But it is also a sign of Locke's delicacy that he doesn't describe the state of nature in this bloodcurdling manner as Hobbes described it, although of course he accepted the same status for it as Hobbes because the insecurity applies to the life as well as to the property.

Student: Well, if the greater part are no strict observers of equity and justice, wouldn't the minority have a rather difficult time organizing a society? The majority wouldn't care to join and wouldn't like the idea involved in it. It strikes me that it would be pretty hard to get out of the state of nature.

LS: Yes, sure. Well, they could of course run away and found a society elsewhere, but the question is that this majority are not united, and so they[xiii] could also form a society of themselves and kill them off independently, or else force that unjust majority to form a society of their own. I don't believe that this is so important a consideration. The important thing is that now Locke gives a clearer statement as to the real color of the state of nature, and that is a kind of understatement of the situation: only the majority are not strict observers of equity and justice. Compare this directly with the statement at the beginning, chapter 3, that the state of nature is a state of peace. Now if the majority are not strict observers of equity and justice and there are no jails and gallows around, you can easily imagine what a state of peace that would be. That is only a first inkling, as it were, which we get here.

Now this will become clearer in the sequel. If you turn to the next paragraph, why is the state of nature so unsatisfactory? "There wants an established, settled, known law, received and allowed by common consent to be the standard of right."[xiv] But what about the law of nature? Answer: "for though the law of nature be plain and intelligible to all rational creatures [which would seem to mean to all men—LS] yet men, being biased by their interest as well as ignorant for want of studying it . . ."[xv] Now this want of studying it is of course not merely their viciousness, that they don't sit down and study the natural law, but these poor fellows, who don't have enough to live, at least to live sufficiently to have time and power for study,

[xi] See Locke, *Essay*, 2.21.14ff., with Hobbes, *Leviathan*, chap. 21.
[xii] *Second Treatise*, sec. 123.
[xiii] That is, the minority.
[xiv] *Second Treatise*, sec. 124.
[xv] *Second Treatise*, sec. 124.

couldn't read the law. The law of nature[7] as Locke understands[8] [it], which is not a law in principle in the conscience—you must never forget that—but a law which becomes accessible only through study, cannot be known in the state of nature. Therefore there is in fact no law there; and therefore this greater part, and not only the greater part, but no one—no one—can be a strict observer of equity and justice, because they don't know the principles.

Now in the sequel he gives other reasons, the absence of a[9] [known] judge and so on, where he seems to presuppose, in the next paragraph, the knowledge of the natural law in the state of nature. For example, when he says in the beginning of paragraph 126: "In the state of nature[10] [there often] wants power to back and support the sentence when right, and to give it due execution,"[11] given the fact of ignorance of the law of nature and the impossibility of passing a just sentence, you don't even have to go into that—there is no binding sentence in the first place, given the statement in paragraph 124.

Student: What I want to know is, when he speaks in paragraph 124 of the distinction between bias and interest, his interest seems to become, later on, passion. Now, according to the Old Testament moral theory, virtue means certainty; the highest interest, if a man really knew it, would be virtue.

LS: Yes, but "interest" here means simply self-preservation, property, and the desire[12] to think for oneself.

Student: Would that mean that the interest would now have to do with real natural law?

LS: I don't understand you.

Student: . . .

LS: Yes, but Locke does not here of course make a distinction between legitimate and illegitimate interest. What Locke implies here is that[13] if you are a party to a conflict, regardless of whether you pursue your legitimate interest or interest no longer legitimate, the mere fact that you are party to the conflict makes you a bad judge. And therefore in such cases people ask other people, impartial people, people whose interests are not involved. From Locke's point of view, they are necessarily biased by their nature. It is not wickedness on their part: they naturally prefer their self-preservation to someone else's. Men are naturally and legitimately biased by their nature and they are necessarily ignorant of the law of nature. Therefore, they cannot have knowledge of the law of nature and therefore [have] no obligation to obey the law of nature in the state of nature. That is, I think, an inevitable consequence of that, and the conclusion[14], stated in the beginning of paragraph 127, [is] that men, as long as they are in the state of nature, are "but in an ill condition." It is an ill condition and not a golden age. That must be clear by now.

And when he uses in the center of paragraph 127 the word "sanctuary," that gives us a good notion of what the state of nature is. The sanctuary is civil society; the state of nature is the opposite of a sanctuary, whatever the term you might use for that. In the state of nature, we can say, there is nothing sacrosanct. How could there be? So the inconveniences of the state of nature, the radical defects of it, the complete absence of any security, naturally and necessarily drives man into society.

But how can society be established? From what is the right of society derived? And here Locke makes a premise which is crucial for his whole argument: there is no right anywhere in society which is not derived from rights of individuals. According to the traditional view, civil society, by virtue of its specific and exalted function, has certain rights which no individual as individual ever possesses. Civil society has rights of its own which are not derivative from rights of individuals. The Lockean view is that all rights of society must—and that is the same in Hobbes—must be derivative from pre-existing rights of individuals, because society is in every respect the work of individuals and has no status of its own. That is the radical meaning of the contractual doctrine as understood by Hobbes and Locke. Society is radically derivative from the individuals.

But very strangely, it becomes their master. This reversion is paradoxical but necessary. The leviathan, a term used by Locke himself, as we found out last time,[xvi] absorbs, necessarily absorbs its creators for the benefit of its creators. But that this is a complicated situation, because it may also swallow its creators, is admitted by Hobbes as an inevitable risk, because the alternative would be certainly to be swallowed by the state of nature. Whereas you have a chance of survival, so to say, if you let yourself be absorbed by the leviathan. In Locke that is mitigated but not fundamentally changed.

So the rights of the state, or the powers of the state, are derivative from powers of the individual, and these two powers are the right to do whatever he thinks fit for the preservation of himself—the unqualified formulation: not whatever is conducive and truly conducive, but whatever he thinks fit, he may do. And the other one is the power to punish the crimes committed against the natural law. But I draw your attention first to one point in paragraph 128: "he and all the rest of mankind are one community, make up one society, distinct from all other creatures. And, were it not for the corruption and viciousness of degenerate men, there would be no need of any other [society—LS], no necessity that men should separate from this great and natural community," namely, the human community, the human race.[xvii] Every society proper is based on a separation from the great and natural community of mankind. He calls these other societies "a private, if I may so call it, or particular political society."[xviii] Why does Locke put such a stress on the fact that every civil society is based on such things as the corruption and viciousness of degenerate men? Why does he put such a stress on the fact that if men were truly good, there would be no need for civil society proper? The only natural society is the human race, and there is a kind of violation of that natural society necessarily implied in the establishment of civil society. Why does he do that? This thought is of course older than Locke, but we find it in Locke's earlier, youthful *Essays*, which we studied before, on page 162, where he says, "The natural law does not presuppose nor permit that men hate each other and that they are divided into hostile societies."[xix] Now these particular societies are necessarily potentially hostile to each other, sovereign states. The law of nature does not permit such hostile societies. The law of nature is incompatible with any war. Why does Locke put such an emphasis on that? I think what he has in mind is this, that the traditional natural law teaching, which he in fact rejects, presupposes the possibility of an all-embracing human society[xx] . . . by nature and not only by virtue of his own arrangements. Then the fulfillment of man's sociality, of his nature, would be a universal society, because only such a universal society necessarily and essentially excludes

[xvi] Perhaps in the student presentation. Locke uses the term at *Second Treatise*, sec. 98.
[xvii] *Second Treatise*, sec. 128.
[xviii] *Second Treatise*, sec. 128. Locke has "politic," not "political."
[xix] *Essays on the Law of Nature*, ed. von Leyden, 162. Strauss's translation.
[xx] There is a break in the tape at this point.

the possibility of hostile particular societies or of war. Now this notion was well known to later scholasticism as the idea of a *civitas maxima*, of an all-comprehensive society; but it was called *civitas*, which in ordinary translation would mean "state," whereas Locke has here in mind, I believe, a governmentless community of the human race. Or did *civitas maxima* ever mean a governmentless [community]? I don't know.

Student: I don't know of any reference to that.

LS: Good. We turn now to this first power, namely, of doing whatever he thought fit for the preservation of himself and the rest of mankind; [this] he gives up to be regulated by laws made by the society. The power of punishing he wholly gives up. This was emphasized by Mr. —— in his report. But why is the power of self-preservation not wholly given up? I would say because he gives it up to be regulated by laws made by the society. He gives it up with the provision that his life, liberty, property be regulated by laws made by the society of which he is a member. These two conditions are essential, and that foreshadows Rousseau's later doctrine: (a) he must be a member of the society; he has a stake in what this society will do. And secondly, the acts of society must have the character of laws so that they apply equally to everyone, the idea being that if the laws apply equally to everyone and no one will vote for a law which will be harmful to him, there will never be a law which will be harmful to anyone. That [idea] is much more developed by Rousseau, but the germs we can see here very clearly.

The question of course arises: Since these two powers have to be given up, the power of self-preservation and the power of punishing,[15] which power does the individual retain? Now in the next paragraph, paragraph 131, we see the individual does not retain his equality, first to last. Why is the abandonment of equality an indispensable condition for entering society?

Student: The very fact that a majority is necessary.

LS: In other words, the difference between rulers and ruled is necessary in any form of society, even in the most democratic one, be it the will of the majority only; and therefore equality strictly understood is incompatible with civil society. There will always be people in any society who can tell you to do or not to do: inequality. In the state of nature there is no one who can tell you with any right. But there may of course also be a variety of inequalities of a subordinate kind. There may, for example, be a hereditary king, for all we know. It is perfectly compatible.

Now let us turn to chapter 10, "Of the Forms of the Commonwealth," where we note that the form of the commonwealth is determined, according to Locke, by the character of the legislative. The legislative may be in the hands of one man, and since of course the executive is entirely dependent upon the legislative, according to Locke the legislative and executive should be in the [same] hands. Is this not then absolute monarchy? Isn't that absolute monarchy, if the legislator is a king? And, of course, he is also the executor.

Student: "Absolute" might be true only if you think of the distinction between absolute and arbitrary. It wouldn't be arbitrary, although it might be absolute.

LS: I see. So in other words, you remember that in an earlier passage we got the impression that absolute monarchy is incompatible with civil society as such. We have to revise that a bit. That has something to do with the question you raised: if Locke's individualism had gone

through unqualifiedly, then absolute monarchy could never have risen again, but by virtue of this subordination of the individual to the community, even the possibility of absolute monarchy arises.

Student: I had a thought in looking back to this passage when I came across this: Locke does say absolute monarchy is incompatible with civil society, and in that passage he never uses the word "political." Could that perhaps be the difference between "civil" and "political"?

LS: No, I don't think so. I believe that the two words are simply synonyms, and if Locke does make a distinction in the heading of one chapter, that has something to do with a certain subtlety within that particular chapter, which I have not discussed because it would lead us too far.

I note only regarding the next paragraph, when he introduces the term "commonwealth," he makes it perfectly clear that this doesn't have a republican meaning; and to make it perfectly clear he quotes King James I, who could not be called by any stretch of the imagination a republican. But why is it necessary for him to make this remark, to say "commonwealth" doesn't have a republican meaning, [that] it means any state?

Student: But republicanism is a bad form.

LS: Yes, but what about the term "commonwealth"?

Student: The commonwealth is a bad one, too, if republican.

LS: So in other words, Locke wants to make clear that he is not a Cromwellian in any way. Therefore he has to make this remark. That only in passing.

Student: As for the king being the legislator in himself, how then would Locke provide that the legislator cannot tax or take property without the consent of the people?

LS: We come to that later. That is a very serious question. That is one tie on the absolute monarch, that he cannot tax the people. And we must see whether that is sufficient. Now let us first begin on paragraph 134.

Reader:
The great end of man's entering into society being the enjoyment of their properties in peace and safety—[xxi]

LS: Where of course you must never overlook the fact [of] what the status and extent of this property is with which these poor fellows could have entered into civil society. I don't want to go into that now. The great end is the enjoyment of their properties, and?

Reader:
the great instrument and means for that being the laws established in [that] society—

[xxi] *Second Treatise,* sec. 134.

LS: You see, incidentally, that he speaks here not of the great and chief end anymore, where you would expect that there is another end, but just a great end which could very well be unique.

Reader:
the first and fundamental positive law of all commonwealths is the establishing of the legislative power.[xxii]

LS: Now that is the fundamental idea of a constitution. The constitution is of course necessarily a positive law. It is a fundamental positive law. Now contrary to the general talk on fundamental laws which was going on in the early seventeenth century, the fundamental laws of England—or France, for that matter; the law Salic, for example, was understood as a fundamental law, and also certain regulations regarding the royal domain could be a fundamental law.[xxiii] A fundamental law meant a law which cannot be abolished even by the concurrence of king and parliament. Now the fundamental law is here specifically defined, and philosophically defined, not by the positive law itself. That you see because he doesn't refer to any legal precedents. He tells you what the fundamental positive law is regardless of what lawyers may say. The fundamental law is that which establishes the legislative power. In other words, it says who is going to be the legislator. The American Constitution is of course a constitution in this sense, because it says who will be the legislator. And who says it in the American Constitution? The people. In Locke's language, the community. And of course this is perfectly in accordance with Locke: it also establishes who is to be the executive, and who is to be the judge, or the judiciary rather. It is not so important that it is written. What is important is that it is explicit. It may very well be oral. And that the general character of a constitution is determined by reason alone and not by legal precedent, that is the most important thing. Reason itself can indicate what a law can be, a binding constitution.

And then this other passage, to which Mr. —— also referred: "as far as will consist with the public good."[xxiv] Military service is probably not the most dangerous example. The danger lies in the very vagueness of the formula. The public good can take precedence over any individual right, that is clearly implied. Of course, Locke knew what he was doing. Look again at the motto of the *Treatises*:[16] *Salus populi suprema lex esto*, "the public safety shall be the supreme law," above all other laws, and that means of course also above those natural rights which by being the foundation of society are somehow absorbed by society.

I note here in the quotation from Hooker—it is always interesting to look them up in the context or at least read them carefully— Hooker makes the qualification, "that for any prince or potentate of what kind soever upon *earth*."[xxv] This limitation is not made in paragraph 123, or for that matter here, as we have seen.

There are also some other omissions, which are quite remarkable, but I do not want to go into them. Look here, I see now what I meant: in the middle of this paragraph on page 188, he says, "nor can any edict of anybody else, in what form soever conceived or by what power

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[xxii] *Second Treatise*, sec. 134.
[xxiii] The Salic Law was a compilation of customary law in the Salian (French) kingdom in the sixth century. The most noted feature of it in Locke's day was the prohibition on women succeeding to the throne, unlike English law which allowed female succession.
[xxiv] *Second Treatise*, sec. 134.
[xxv] Quoted at sec. 134, note. Strauss's emphasis.

soever backed."[xxvi] There is no limitation here to human power or powers upon earth,[17] which leads to the question: What is the status of any religion in society? Is its legal right not necessarily dependent on a decision of the community or legislative itself—the Hobbean conclusion? I think it is no accident that he quotes this reference to "upon earth" in Hooker on this very page. We might become observant of the fact that he omitted [it] in his statement, although he says, "any power whatsoever," and "of anybody else." You see, a comprehensive formulation and no limitation to "upon earth."

There are other interesting things in the quotations from Hooker, but this would not lead too far. I remind you again of this passage which we read before but at which we should have another look, paragraph 22, beginning.

Reader:
The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule. The liberty of man in society is to be under no other legislative power but that established by consent in the commonwealth; nor under the dominion of any will or restraint of any law, but what that legislative shall enact according to the trust put in it.[xxvii]

LS: The legislative is truly sovereign, and this passage even here implies that it is not limited by the natural law. We will come to that. But that doesn't mean that Locke did not accept natural law in this sense . . . It means only, just as in Hobbes but more precisely defined in Locke, that a legislative established properly makes an appeal to natural law superfluous. That is, again, more clearly developed by Rousseau, but the thought is here implied, and we shall see this later: the sovereignty of the legislator, I would conclude. But in the next paragraph we come to a limitation.

"[The legislative power is—LS] the supreme power in every commonwealth; yet . . . It is not, nor can possibly be, absolutely arbitrary over the lives and fortunes of the people; for it being but the joint power of every member of society given up to that person or assembly which is legislator, it can be no more than those persons had in a state of nature before they entered into society and gave up to the community."[xxviii]

In other words, here Locke says that the legislative is limited by the natural law. Incidentally, here he again quotes Hooker, and if you read that, look up the passage and translate into Lockean terms, you arrive at the conclusion that men in the state of nature are obstinate, rebellious, and averse to all obedience to the sacred laws of his nature: a little better than a wild beast. I say, if you take the Hookerian statement and translate into Lockean language, you arrive at this conclusion. So in other words, paragraph 135 seems to say again that the sovereignty of the legislature, of the supreme power, is limited by natural law. But the question arises, of course: How is this to be made effective? For let us not forget one crucial sentence, paragraph 7: "The law of nature would as all other laws that concern man in this world be in vain if there were nobody that in the state of nature had a power to execute that law." Let us apply this to the natural law limitation of the legislator. The limitation of the legislator by the natural law would be in vain if there were no one effectively to restrain the legislator. Who is that?

[xxvi] *Second Treatise*, sec. 134.
[xxvii] *Second Treatise*, sec. 22.
[xxviii] *Second Treatise*, sec. 135.

Student: No one.

LS: Oh, yes: the people. The reserved right of the people. The executor of the law of nature, which is absolutely necessary in order to give the natural law the character of a law, is the people. But the question is:[18] [What] is the mechanism, how does this work?

Until we come to that point, let us first see paragraph 136. The legislative is further limited to laws, as distinguished from extemporary, arbitrary decrees. Why is that necessary? "For the law of nature being unwritten, and so nowhere to be found but in the minds of men, they who through passion or interest shall . . . misapply it [note this reference to the intrinsic law of nature—LS] cannot so easily be convinced of their mistake where there is no established judge."[xxix] That is to say, the limitation by natural law taken in itself is not sufficient because of the obscurity of natural law. Therefore a more important practical security is that the legislator is forbidden to rule by extemporary decrees. He can only establish standing laws. The status of private laws here, of laws applying only to individuals, is not discussed, which of course would be crucial. In the strict construction as Rousseau made it, the legislative is not allowed to make any laws applying to private individuals mentioned by name themselves, because that would go beyond the competence of the legislative. These acts applying to individuals can only be done by the executive on the basis of a preceding general law established by the legislative, because the guarantee which exists in the very notion of law, as applied equally to all without consideration of person, is violated if persons are mentioned in that law. There is something in that thought, that the very fact that it is a law and not a decree applying to an individual or individuals is some guarantee against some of the extreme things which government can do. From this point of view the worst law is better than simple lawlessness, and this thought of course is intended here by Locke.

Now we come to this difficult passage in paragraph 137, where Locke speaks of absolute arbitrary power. He makes here first a distinction and says: "Absolute arbitrary power, or governing without settled standing laws, can neither of them consist with the ends of society and government."[xxx] So absolute arbitrary power is something different from governing without standing laws: "neither." What then is the absolute arbitrary power, if it is not the same as governing without settled standing laws? Now towards the end of the same paragraph, we find: "For all the power the government has, being only for the good of society, as it ought not to be arbitrary and at pleasure, so it ought to be exercised by established and promulgated laws."[xxxi] So it seems that "arbitrary" means something like "at pleasure." Absolute and arbitrary power is power which is not directed towards the good of society. But what about absolute? He[19] no longer mention[s] "absolute" here as something to be omitted. What then does he mean by "absolute" as distinguished[20] [from] "arbitrary"? Let us look at page 191, line 4[21]: "It cannot be supposed that they should intend, had they a power so to do, to give to any one or more an absolute arbitrary power over their persons and estates and put a force into the magistrate's hand to execute his unlimited will arbitrarily."[xxxii]

"Unlimited" seems to be the same as "absolute." What, then, is this? I believe the only solution to this difficulty is to say that the legislative power is absolute—the Hobbean notion. Why is that[22] so evident? I could refer to a number of passages; I mention only one, which we

[xxix] *Second Treatise*, sec. 136.
[xxx] *Second Treatise*, sec. 137.
[xxxi] *Second Treatise*, sec. 137.
[xxxii] *Second Treatise*, sec. 137.

discussed last time. Paragraph 88, page 164, top: The legislative must establish punishments for "transgressions which they think worthy of it committed amongst the members of[23] [that] society."[xxxiii] The legislative decides which transgressions deserve punishment. There is no limitation here mentioned. Also in paragraph 134, page 188, bottom, the passage which we have not read, where he says, "all the obedience, which by the most solemn ties any one can be obliged to pay, ultimately terminates in this supreme power and is directed by those laws which it enacts."[xxxiv] What is it? There is no legal possibility to go beyond the supreme power, i.e., the legislative, of a given society. But we must not forget that in this part of the argument, we have in no way decided whether the legislative should be one man or representatives elected by the people. In other words, we are still confronted with the possibility that we may have an absolute monarchy, one man who is the legislator. Therefore we have to repeat the question: What will compel the legislator to rule only by standing laws? Because that is the only clear limitation we have found, the only tangible one, because that he should govern with a view to the common good is not legally tangible. The answer given in the next paragraph is: the power of the purse must be reserved. The supreme power cannot take from any man part of his property without his own consent. In other words, in the moment the king levies a tax which has not been granted, you can say, by the people or by the representatives of the people, he begins civil war. That is a perfectly clear case. That would seem to solve the problem completely.

I note[24] the end of paragraph 138, where he says: "if the one who commands those subjects have power to take from any private man what part he pleases of his property and use and dispose of it as he thinks good."[xxxv]Locke seems here to imply that the representatives of the people in a monarchy must have the right not only to grant money but also to appropriate, "to use and dispose of it as he thinks good." When was the principle of appropriation established?

Student: 1665 or 1666.[xxxvi]

LS: During the Restoration. So in other words, here he thinks of the British situation. Of course the right of appropriation is a still more incisive limitation on the power of the government than the right of granting revenue itself.

But here is a certain difficulty. If you will turn to the middle of the paragraph, page 192, line 4: "Men, therefore, in society having property, they have such right to the goods by which the *law of the community* are theirs."[xxxvii] Now think of our legislator. He won't raise taxes, no. But what about changing the laws of community? That can be more effective than taxation. For example, you don't have to have an inheritance tax: you simply abolish the legal institution of inheritance and say that after the death of a proprietor his estate reverts to the crown. What about that? We are speaking now not[25] of [revolution or] the right of revolution[26], but of the legal situation. If it is possible to vest the legislative power in a single man—and admittedly all property owned in society is owned on the basis of positive law and

[xxxiii] *Second Treatise*, sec. 88.
[xxxiv] *Second Treatise*, sec. 134.
[xxxv] *Second Treatise*, sec. 138. In the original: "if he who commands."
[xxxvi] The Supply Act of 1666 directed how the money granted by Parliament should be used. According to constitutional historian J. P. Kenyon, the practice of appropriation had become customary by 1678. J. P. Kenyon, *The Stuart Constitution* (Cambridge: Cambridge University Press, 1986), 388-89.
[xxxvii] *Second Treatise*, sec. 138. Strauss's emphasis.

not on the basis of natural law, which is perfectly clear—what will you do, short of rebellion? What is the situation in natural law regarding this problem? Well, what is the way out? There is no way out, it seems to me, except to rule out absolute monarchy, to have the legislative vested in representatives of the people—perhaps jointly with the king, that is all right. But certainly the property of the subjects must be—you see, you could say that the monarch is legislator in everything except what has to do with money. The distinction is extremely difficult to make, because many other laws of course have all kinds of fines and punishments attached to them, and that is one way of getting money from the subjects, by affixing to every penal law a considerable confiscatory fine. That is one way of not raising taxes. So I think that is the only way out, to say that the legislative power must be essentially in the hands of the property owners. Otherwise, there is no other way. And I think that the admission of the legislative power in the monarch is due not entirely to giving the doctrine a kind of latitude and applicability to other countries, which is not possible.

I note, as far as the next paragraph[xxxviii] is concerned (we cannot go into everything), that Locke makes here an explicit distinction between absolute and arbitrary power, on lines 4 to 5 from the bottom, in that example of the soldier, which we have discussed before. Legislative power as supreme power is necessarily absolute. I remind you in this context of the reference to that "mighty leviathan" in chapter 8. The mighty leviathan. Locke writes "leviathan" with a small *l*, and refers only once to it.[xxxix]

Now this example of the sergeant and the general who may practically kill the soldier but not take a penny from him: Why is this example not quite pertinent for the overall problem which it concerns? Because they have a very limited function. They do not have the function of regulating property, the overall function. And therefore we have to consider that in interpreting that example.

In paragraph 140 he makes the point that only the people and their representatives can grant taxes: this famous principle, *no taxation without representation*, which, while of immense practical importance, as you know from history, yet does not go to the root of the problem because it concerns merely taxes and not property in any form.

Of course the legislator cannot transfer the power of making laws to any other hands. That is to say, for example, if a king of England dies without issue, he could not hand over his realm to someone he likes particularly and [who] does not have the legal title based on the original grant of the people.

It is more important to consider briefly paragraph 142, the last paragraph of this chapter: "These are the bounds which the trust that is put in them by the society and the law of God and nature have set to the legislative power of every commonwealth, in all forms of government."[xl] You see, here Locke now speaks of the natural law limitation[s] on the legislative. Which are they? If you read the four paragraphs[xli] by themselves, there is not a single reference within them to natural law. They are to govern by promulgated established laws, but it is not said that these laws must be within the limits of natural law. These laws are to be assigned for the good of the people. They must not raise taxes on the property of the

[xxxviii] That is, sec. 139

[xxxix] *Second Treatise*, sec. 98. A marginal note says "not true," possibly referring to the claim about capitalization (Laslett, for example, prints an uppercase *L*, whereas Cook uses lowercase).

[xl] *Second Treatise*, sec. 142.

[xli] Namely, those comprising sec. 142.

people, which is a particularly amusing natural law limitation if you think of the tradition[27]—especially if you think of Locke's thesis that the natural law is set forth with the greatest clarity and plainness in the New Testament. So you would have to find in the New Testament, really, a statement to the effect "No taxation without representation," contrary to "Give to Caesar what is Caesar's."

But there are some other things. You see Locke gives here four limitations. He has given four in the chapter itself, beginning in paragraph 135. Now to compare them is quite interesting, because the first of these qualifications was exactly the limitation of the legislative by the natural law. The place is taken by "they are to govern by promulgated established laws,"[xlii] which was number two in the previous discussion.[xliii] And number three was practically number two, and number four of the first one is completely changed.[xliv] So I think we can leave it at saying that the power of the legislative is legally omnicompetent. It really has this decisive character of the Hobbean sovereign.

There is, however, one crucial limitation which becomes effective only very rarely but which is legal, and that is the dissolution of government, which we will discuss later. The community retains a normally dormant power of disestablishing the legislative and whatever depends on it. That is[28] surely [an] important difference, but in all situations short of revolution, there is appeal from the verdict of the supreme power.

In the next chapter,[xlv] Locke discusses the three powers, which however are not yet legislative, executive, and judicial, but the legislative, executive, and federative powers. Locke does not yet speak of the independence of the judiciary. The executive and federative is really what we today would call the executive, only the executive power is the executive power as exercised within the community, [the] executing of laws, and the federative power is the power exercised by the same man or body of men against outside or foreign powers. Locke makes the distinction because in themselves the two functions of executing the laws and the power of waging war and peace,[29] making alliances and so on, are distinct functions, although ordinarily and reasonably united in the same person. But why is Locke so anxious and seemingly so pedantic in making this distinction between the executive and the federative? He has a good reason for that. Well, because it belongs essentially to the government, and not to the government which immediately represents the people, i.e., the legislative, but to the remote one, the executive. This executive must have a very important power which cannot be regulated by law. Whatever the executive, be he called president or king, does within the country can be regulated by law, but in foreign situations it is impossible.

We will read that immediately, but only one point I emphasize. Again in paragraph 145, Locke says that what is now called international law is identical with the law of nations, which implies of course also that the relation between nations is the state of nature, with all the implications of that. Now the point which I have in mind is on page 196. Let us read paragraph 147, from the beginning, on page 195, bottom.

Reader:

[xlii] *Second Treatise*, sec. 142.
[xliii] That is, at sections 136ff.
[xliv] This sentence is either obscure or manifestly false.
[xlv] That is, chapter 12.

These two powers, executive and federative, though they be really distinct in themselves, yet one comprehending the execution of the municipal laws of the society within itself upon all that are parts of it, the other the management of the security and interest of the public without, with all those that it may receive benefit or damage from, yet they are always almost united. And though this federative power in the well or ill management of it be of great moment to the commonwealth, yet it is much less capable to be directed by antecedent, standing, positive laws than the executive, and so must necessarily be left to the prudence and wisdom of those whose hands it is in to be managed for the public good; for the laws that concern subjects one amongst another, being to direct their actions, may well enough precede them.[xlvi]

LS: Do you understand the expression "precede them"? Precede whom or what?

Student: Precede the actions.

LS: Thank you. I see. But the thought of Locke is clear here, that the regulation of foreign affairs is essentially discretion and cannot be subjected to law. I mean, in the American experience between the two wars, there were some such interesting cases to regulate the conduct of this country independently of the conduct of other nations, the Neutrality Act. Well, it is very interesting to compare of course the *Federalist Papers*, to say nothing of the U.S. Constitution itself, with Locke as to the extremely interesting differences regarding foreign affairs. Locke follows here of course the British practice, but giving reasons of his own.

Now let us turn to the last chapter, "Of the Subordination of the Powers of the Commonwealth," in which he makes clear the fundamental point that the primary power is of course the legislative power, as we have seen before. There is a reserved ultimate right of the community. We can perhaps read on page 197, line 3 to the end of the paragraph.

Reader:
And thus the community perpetually retains a supreme power of saving themselves from the attempts and designs of anybody, even of their legislators, whenever they shall be so foolish or so wicked as to lay and carry on designs against the liberties and properties of the subject; for no man or society of men having a power to deliver up their preservation, or consequently the means of it, to the absolute will and arbitrary dominion of another, whenever any one shall go about to bring them into such a slavish condition, they will always have a right to preserve what they have not a power to part with, and to rid themselves of those who invade this fundamental, sacred, and unalterable law of self-preservation for which they entered into society. And thus the community may be said in this respect to be always the supreme power, but not as considered under any form of government, because this power of the people can never take place till the government be dissolved.[xlvii]

LS: Did you notice here something in this passage which you read? A very strong, perhaps the strongest, statement regarding the fundamental character of the law of self-preservation.

Student: The middle one of the three being "sacred."

[xlvi] *Second Treatise*, sec. 147. In the original transcript the passage is abridged.
[xlvii] *Second Treatise*, sec. 149. In the original transcript the passage is abridged.

LS: Yes, yes. Sacred. That's a good point. Very good, what you say. All right. Therefore that should really be the alpha and omega of the whole doctrine. And does he leave it at that? Father Buckley, did you have a point?

Father Buckley: Well, I noticed particularly that they always have the right to preserve what they have not the power to part with. I thought that was particularly strong because that exalted the power of the individual person. This is one thing they have no power to part with.

LS: Very well. But how does he go on? After having said—as Mr. —— pointed out, he even called it sacred—immediately after having made the strongest plea for the right of self-preservation, speaking of the *law* of self-preservation, which emphasizes that "sacred," what does he say? Community. In other words, after having made the individual the source of every sacredness, so to say, he immediately absorbs the individual into the community. That makes the situation perfectly clear.

The special concern in this chapter 13 seems to be a discussion of the English situation (and without however referring to England by name), namely, the cooperation of the executive and the legislative, which was of course the English situation. He discusses this in this chapter, Now let us read, beginning at the bottom of page 197.

Reader:
And yet it is to be observed that though oaths of allegiance and fealty are taken to him—

LS: To the king, in fact—

Reader:
it is not to him as supreme legislator, but as supreme executor of the law, made by a joint power of him with others; allegiance being nothing but an obedience according to law which, when he violates, he has no right to obedience nor can claim it otherwise than as the public person invested with the power of the law, and so is to be considered as the image, phantom, or representative of the commonwealth, acted by the will of the society, declared in its laws, and thus he has no will, no power, but that of the law.[xlviii]

LS: Yes. You notice this here: a "phantom." What a depreciation of the king already at the end of the seventeenth century! That is probably one reason why he does not speak . . . You see, that is very funny. In this context where he obviously speaks of England, and England is never mentioned—at least not that I am aware of—he speaks in a way in paragraph 152, as you can see, from the middle of the paragraph on: "we need not speak . . . Only thus much is it necessary to our present purpose, that we may take notice,"[xlix] where "we" emphatically does not mean "we English," whereas the context is the English, and usually when he speaks of "us" he normally means the English.

There are many references on the next page to the "original constitution," as you must have seen, a term quite common at that time. The original constitution, as you see, has here a broad meaning, but one which is necessary from Locke's point of view. If the original constitution, the first act, the fundamental positive law of the society, establishes the legislative; and if the legislative is not a natural person, one man, but an assembly, then the fundamental positive

[xlviii] *Second Treatise*, sec. 151. In the original transcript the passage is abridged.
[xlix] *Second Treatise*, sec. 152, with slight changes by Strauss.

law, the original constitution, must of course determine when and for how long the legislative assembly has to convene and who has to convoke it if it is to be convoked, etc. And here he refers to the English situation in which there is not a necessary time when parliament meets, but it depends on convocation. But the convocation is made clear by Locke. The convocation is not left to the arbitrary pleasure of the executive, but he is under a constitutional obligation to convoke it—how does he put it?—"when the original constitution or the public exigencies require."[l]

The most interesting practical discussion is at the end of this chapter. A most extraordinary situation in which the original constitution is defective and cannot legally be amended. The original constitution may stipulate not only the times when the legislative assembly must convene; it may also establish which city or town [is to] send how many representatives into the legislative assembly. The original constitution. Now some of these towns—let us take a fictitious case: fifty percent of these towns become rotten boroughs, and therefore the assembly will vote down every attempt to abolish rotten boroughs. The legislative assembly is in no way competent to handle that. And people do not make a revolution, ordinarily; the community will not have a revolution in order to get it changed. How can this be legitimately changed? How can it be changed without revolution? What is Locke's proposal?

Student: Well, the broadening of the English king, which started out a few years before, to new boroughs and remove the representation from the old.

LS: Yes . . .

Student: Because of the great magnitude of rotten boroughs, Parliament made a great storm against Charles II and ended his right to do this, in effect. There was no law against it but he was the last one to do it. And they had an interest in maintaining Parliament as it was with ten or twelve members apiece. But they regarded it as proper, I know this . . .

LS: That would be quite interesting for a study of English history to see, because it would show the extent of fairness involved, if he was making a proposal which would be not only so unpleasant but perhaps even harmful to the party to which he in a general way belonged. I have always been shocked by this passage. You see here[30] in paragraph 157, center, [he says],

"To what gross absurdities the following of custom when reason has left it may lead, we may be satisfied when we see the bare name of a town of which there remains not so much as the ruins, where scarce so much housing as a sheepcote or more inhabitants than a shepherd is to be found, sends as many representatives to the grand assembly of lawmakers as a whole county numerous in people and powerful in riches."[li]

So in other words, numbers must be considered for fair representation—but also riches; I would infer that. And as a proof, I cannot give you at the moment any passage in Locke, but the simple consideration that the protection of property requires a proper representation of the emphatically propertied people; otherwise, they are in danger that their property will not properly be protected.

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[l] *Second Treatise*, sec. 155.

[li] *Second Treatise*, sec. 157. An ellipsis in transcript has been filled.

Student: There is no direct advocacy by Locke of extension of suffrage. Numbers will be represented, but he says nothing of the extension of the vote. In other words, new seats will be given to new towns, but as far as the vote, it is restricted.

LS: No, the assertion that Locke was a majority democrat—which Willmoore Kendall in his book brings up—is, I think, untenable. In other words, in point of fact Locke never drew the conclusion that since everyone enters civil society with the same right as everyone else, he must also have the vote as everyone does. That he did not draw.

Let me see how this comes out. Rousseau later on makes this fundamental principle: No one can be subject to law in the making of which he has not been a potential contributor by vote. But even Rousseau, I think, regards it as perfectly compatible with such fundamentally egalitarian policies that there be differences of votes. He discusses that at great length in the fourth part of the *Social Contract*, the chapter on election.[lii] The Roman election would save an overpowering majority to the rich and rural population and practically disenfranchised the urban poor, and he found this perfectly all right—because the proletariat would sell their liberty for bread, and therefore they couldn't be trusted—from the point of view of the public liberty. In other words, there was a time when fundamentally democratic people would not draw the conclusion of "one man, one vote." I mean, not only universal suffrage, but also universal and equal suffrage.

Student: This conclusion has been drawn in England during the Civil War by the Levellers, and I think that might be one reason why it was so odious.

LS: Well, it created the danger of—how shall I say it?—of economic leveling. That was the great issue between the Levellers and Addison, that Addison was as much concerned with property as with liberty, whereas Levellers were not concerned with property.[liii]

Student: . . .

LS: Yes. But he makes the distinction, as we have seen, between the rational and industrious on the one hand, and the quarrelsome and contentious on the other.[liv] In other words, the distinction between the rational and the nonrational returns in Locke in this way: those who are rational in taking care of their concern with comfortable self-preservation and those who[31] [are] not—the bums, who also like, in their way, comfort but they don't go about it in a rational manner. The law should privilege this rational part, and no injustice is done to the quarrelsome and contentious because even they will be better off in a prosperous society. Think of beggars, I mean people who have decided early in their life that they will never earn bread by working but only by begging: they have to admit that their fate will be better in a prosperous society than in a poor society. So no harm is done to anyone if [the] rational and industrious are privileged by legislation. That is, I think, what Locke would say. I think that's

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[lii] Rousseau, *On the Social Contract*, 4. 4.

[liii] The Levellers were members of a religious–political movement of the mid-1640s during the English Civil War. They sought a variety of reforms in church and state, including greater religious toleration and democratic reform of the suffrage. They were thought to favor a "leveling" of society, including a more equal distribution of property and a diminution of the role of birth and rank in English life. Joseph Addison (1672-1719), was an English writer and politician. He was author of the very popular play *Cato*, and coauthor of the newspaper series *The Tatler* and *The Spectator*, both written with his friend Richard Steele. Among the many targets of his pen were the Levellers.

[liv] *Second Treatise*, sec. 34, mentioned in session 5.

the whole problem[32] up to the present day. If it were possible to have a constant level of reasonable prosperity for all members of society from which even the beggars would profit, no possible problem would arise. The difficulty came in when, in the middle of the nineteenth century, a part of the people in England especially were very badly off—you know, these (if I may exaggerate a bit)[33] women pregnant in an advanced stage working in mines—and the government interfered with that, which according to some people is, I think, the beginning of Hitler's tyranny. I think von Mises is inclined to this opinion.[lv] And then you also of course[34] [could] take a different view and say that something must be done about it. In other words, the famous difficulty which early capitalism created in England and which led to the radical movement in England and to the demand for universal suffrage, which followers of Locke, men fundamentally in agreement with Locke—such people like Macaulay—of course fought against[35] because they knew quite well that this would mean the end of the unquestionable preponderance of the prosperous classes.[lvi] In other words, if the well-being of the property owners in a commercial and industrial society would automatically guarantee the well-being of the working classes, no difficulty would ever exist.

Student: . . . [lvii]

LS: . . . the private citizens being concerned with enriching themselves, the government establishing laws favorable to such things, and at the same time protecting them against foreign enemies. That is the fundamental situation.

To repeat only the main point which came out today, and to which Mr. ——[lviii] drew our attention at the very beginning: [there] is this strange tension between the Lockean beginning and the Lockean end. The beginning is without any question the absolute right of the individual, and yet this right cannot become effective except by a radical subordination of the individual not to the government simply, but to the community. In fact, that means of course most of the time to the government. Still, we must not forget one thing, however, the one crucial point: this radical individualism survives within society and on the basis of established government, and there are no moral limitations whatever on acquisition and on the use of property; and it is wise policy for the government to give this form of self-assertion its widest range, because that will be conducive[36] [to] the welfare of the society as a whole. So under law, the sovereignty of the individual—if we can call anything under law sovereign, but if I may use that paradoxical expression—under law the sovereignty of the property acquired by the individual survives. I remind you of this passage in chapter 5, where he says, "Man still has in himself the source of property," where *man* means of course the individual, and this is the source not only of the individual's property but of the wealth of nations as a whole, in the concern of each with his property and with the increase of it.[lix]

Is there any other point you would like to take up?

[lv] Ludwig von Mises (1881-1973), economist of the Austrian School, devotee of free-market economics and libertarianism in politics.

[lvi] Thomas Babington Macaulay (1800-1859), noted essayist and historian of the era of the Glorious Revolution and beyond. His work *The History of England from the Ascension of James II* is considered a masterpiece of English historical writing.

[lvii] There is a break in the tape at this point.

[lviii] The transcriber notes: "student who read paper earlier" in the session.

[lix] The reference is apparently to *Second Treatise*, sec. 44: "Man . . . had still in himself the great foundation of property."

[1] Deleted “in.”
[2] Deleted “mountains.”
[3] Deleted “that.”
[4] Deleted “they.”
[5] Deleted “that.”
[6] Deleted “that.”
[7] Deleted “cannot be known, the law of nature.”
[8] Deleted “the law of nature.”
[9] Deleted “knowing.”
[10] Deleted “where one.”
[11] Deleted “that is—.”
[12] Deleted “to have.”
[13] Deleted “interest as such, regardless of.”
[14] Moved “is.”
[15] Deleted “but.”
[16] Deleted “the motto which is.”
[17] Deleted “and.”
[18] Deleted “how.”
[19] Deleted “does.”
[20] Deleted “by.”
[21] Deleted “[section 137].”
[22] Deleted “I mean, first of all.”
[23] Deleted “this.”
[24] Deleted “at.”
[25] Moved “now.”
[26] Moved “or.” Moved “revolution.”
[27] Deleted “namely.”
[28] Deleted “a.”
[29] Deleted “and.”
[30] Deleted “he refers, “*to what gross absurdity the following . . .*”
[31] Deleted “do.”
[32] Deleted “and.”
[33] Deleted “these.”
[34] Deleted “would.”
[35] Deleted “it.”
[36] Deleted “for.”

On Locke's *Second Treatise*, chapters 14-16
Session 15: March 10, 1958

Leo Strauss: [In progress] . . . but let's think that through for a moment. Let us grant you everything, that Locke speaks confusedly about every important subject. We could add many more topics which did not come up in your paper,[i] for example, the state of nature, which is the starting point of the whole construction. Locke's descriptions of the state of nature are clearly contradictory. It goes through the whole book. Now if that is so, one can of course leave it at saying Locke was a muddler, but one can also wonder—and we have had some occasion to consider that—that this confusion may have been known to Locke, that Locke has reasons, reasons in the broader sense, political reasons, for speaking so confusedly; and still a broad general practical line emerges very clearly: that this is a defense of a system like that established in England after 1688—of that type at any rate, and in this respect Locke never contradicts himself in this crude but important practical conclusion. The grounds on which he does this differ and are even contradictory.

Well. [LS writes on the blackboard] If you take an acute angle, and the point of it is the practical conclusions, and the beginnings of the sides of the angle represent two different and even opposite sets of principles—both kinds of principles, one very close to the traditional notion of natural law and the other rather close to Hobbes, lead to the same practical conclusion, at least apparently. And the root of the confusion would perhaps have to be sought in these two different sets of principles which Locke employs and of which I, for one, am sure that he knew that they were different. Whether that is sufficient for explaining every confusion in Locke is of course hard to say, and that requires an examination of each point.

Now to take up the point you mentioned regarding the problem of indemnity for the just conqueror, where you found a great difficulty. I forgot what the precise point which you made was, but you will remember.

Student: He didn't describe the relation it had to the principle at hand.

LS: But is that immediately connected with the problem of indemnity?

Student: . . .

LS: No, but excuse me. Locke makes it perfectly clear that the innocent people, including especially the wives and children, cannot possibly lose their property even by a just conqueror. Certainly, by his crusade or a just war, if you will call it that, he acquired a right . . .

Student: . . .

LS: In a civil case, where one stole money or robbed, there is a civil claim against the robber. That is applied to a large part of the population who started an unjust war. The presupposition is the sanctity of property, of private property. If you grant that, I think you will have to admit[1] [Locke's] conclusion, and the problem would then have to return to what is the status

[i] Strauss responds to a student's paper, read at the beginning of the session. The reading was not recorded.

of private property. I mean, that which is actually possessed by A, a member of civil society: Is this his property on the basis of natural law, or is this not really what they call civil property, property owned under civil law? And why is the foreign conqueror obliged to respect the law, and hence everything owned under law, of the conquered country? All right, then, we come back to this really great question: While the original title to property, the natural law title, is labor, but in civil society property is no longer based on labor but on legal title, on merely positive legal title, how can Locke really make plausible that civil property has the sanctity of natural property? Natural property being property acquired by the sweat of your own brow, by labor. That's a great problem, surely.

Now to come to a much graver point: Locke asserts, you say, the identity of public and private interest, or presupposes that, and you make this important qualification, that this identity is proven on the lowest level. If we limit that to life and liberty, then it is certainly clear that in this respect, in every non-despotic or non-tyrannical state everybody's life and liberty is guaranteed by law and the whole power of the community guarantees the life and liberty of each, which cannot be the case in the state of nature, and to that extent there is an identity of private and public interest. That I admit. Now where does the problem come in then? If you enlarge the right of the individual—now the enlargement which Locke proposes is that you take in property. Again, is the status of property appearing in the civil society claimed in the state of nature?

Student: Apparently the wives and children . . .

LS: No, I mean anyone. If you own a piece of land in the state of nature and you own it in civil society, where is the property more secure?

Student: In civil society.

LS: So where does the difficulty come in? I do not deny that there is a difficulty, but where does it come in?

Student: . . . the problem is to determine the exact power of the government over property.

LS: Yes, but perhaps consent is a somewhat vague traditional formula which would not enter if Locke had given a perfectly scientific or philosophic presentation of his doctrine. Let us assume that Locke meant this seriously, and I think he did, that every man has by nature an irrepressible desire for happiness. And he says that somewhere. So the pursuit of happiness, Locke says, must be allowed: it cannot be hindered; it belongs to man's natural faculties. But then Locke would come to this consideration: everyone understands something else by happiness; therefore that is a right which cannot be well defined. But let us look at certain conditions of happiness, however understood, whether these conditions cannot be defined. Now Locke would say one condition of happiness is life. The second is liberty, because you cannot pursue your happiness if you are controlled by someone else because you might understand something different by happiness than the other fellow. And the third is property, because property is in some degree, stated very generally, a condition of happiness. Think of such a little thing as privacy, which many people will regard as crucial for your happiness, and privacy presupposes some property—very little, but it is *your* room, even if rented. It is some form of property.

So let us then assume that generally and crudely, but relevantly, that life, liberty, and property are conditions of happiness however understood. Then a satisfactory order, an order satisfactory to practically all individuals, must[2] have as its function to guarantee life, liberty, and property. And since everyone is better off in this respect in civil society than in anarchy or in the state of nature, there cannot be conflict between the public and private interest. Except under one condition: if you have a purely arbitrary government [and], say, a king, or whatever may be his title, simply singles you out and says, "I want to make this fellow absolutely miserable and deprive him of any possibility of pursuing happiness," and he has the whole force of the community on his side. This man can be said to be more miserable in civil society than in the state of nature. Therefore, Locke says, we mustn't tolerate this tyrant. We must have an order in which no one can be singled out in this way, i.e., all actions of this kind must be in accordance with standing laws applying equally to the rich and poor. Now if you have such laws, then the conflict would seem to have been avoided. You see, you cannot take a very complicated question where people feel they are unjustly treated. That happens, of course, all the time. The question arises, of course: How justified is that feeling? And Locke's answer would be very tough, and he would simply say: Look at the foolish day laborer in the United States now, whether he is not better off than the Indians living in the woods. Here of course there is a question of fact, and a very serious question, there is no doubt about that. But if we disregard this consideration the construction seems to be clear. Where does the difficulty arise?

Student: One difficulty would be that the individual doesn't have the actual practical power to resist a tyrannical government, because the right of revolution can only take place if the majority agrees.

LS: That is true, but what about the normal situation, normal in Locke's sense, where you do not have a tyrannical situation or absolute arbitrary power? You have, let us take the simplest case, a republican government and the legislative consists of representatives of the people. What about that? And they rule by law, and they themselves are subject to the laws they made—a great check. Where does the difficulty come in?

Student: What if the laws are in their favor, in the interest of a few and not many?

LS: But if they are representatives of the people as a whole?

Student: If the parliament is permanent, what will prevent them from making laws in their favor?

LS: But you've stated already the remedy for this disease. No parliament must last longer than, say, seven years, or three. It's not free. That is, I think, a partial indication of Locke. In the moment that there develops an interest of the parliamentarian different from that of the people, you have a kind of arbitrary power. But let us take the example discussed by Locke: rotten boroughs. Here you have the danger of parliamentary tyranny not changed by a relatively short tenure; that is to say, take the situation in which the position is practically in the hands of a few landowners owning these rotten boroughs, the few voters will be put under whiskey on election day and the vote will go in the right way. Now what does Locke say in this case? Here you have no parliamentary or legislative remedy. This is the more interesting case. Now here you conceive of the necessity of having a check on the representatives themselves, on the legislative, and that is supplied by the executive's prerogative. The difficulty is located in his complicated relation between the executive and the legislative.

Once you give the prerogative to the executive, then there exists of course the danger of misuse. And what Locke must have had in mind [is] that somehow the two peaks, the legislative and the executive, check each other more or less. But let us assume that they don't do that. What will happen then? That means there will be in fact, in the guise of legality, tyranny. And what then?

Student: Revolution.

LS: Yes, sure. In other words, if government manifestly does not fulfill the functions for which it has been established, namely, to secure life, liberty, and property, then there is no question that this government has no longer a, let us say, moral claim to be respected. And then the people are perfectly right in revolting from that. Now the question is, what we are concerned with is this: Is there a possibility of having a legal order in which the right to revolution—which can never be a legal right, legal in the sense of positive law—in which the right to revolution can never become invoked? The question is whether with this standard of criticism which you have the possibility of such a society is not itself questionable.

Student: He also does not provide for any instrument in the government itself, other than checks and balances between the executive and legislative that could override the legislative.

LS: Yes, but what would you think of such an instrument? No gerrymandering of any kind? Well, all right, but then you get into another difficulty, of which Locke was surely aware. If you have an extreme dependence of the government, with its two branches, on the electorate, government itself may become impossible.[3] Locke does not speak so much about what the government alone cannot do, what the people cannot do as of the rights of the people, but Locke has this in mind. In other words, Locke tried to the best of his power to suggest a scheme in which the rights of the people were as secure as they can be made without endangering the possibility of government. And I think when Burke later on said in one of his early writings that he always was very much concerned with government, which sounds trivial, what he had in mind was exactly this: not only the guarantee of popular rights, but that government remains possible. You see, there is a possibility implied in direct democracy, where you can have this kind of guarantee of popular rights perhaps, but where on the other hand the function of the people as people or the electorate as electorate can never be tyrannical—that endangers the possibility of governmental[4] [decision], the[5] [decision] of the public. Locke thought of that. And I'm not so sure whether we have not become accustomed through the development of the late nineteenth and early twentieth century of underestimating this other side of the coin. So much for this.

The rights of the individual are less unclear. Locke would say he does not leave the rights of the individual unclear in the normal situation, meaning under republican government with this balance of the legislative and the executive. In the abnormal situation, in the case of tyranny or usurpation, there is indeed this difficulty. In other words, there cannot be an elegant solution for this situation: When has the moment come to rise?

By the way, there is another point to which you alluded and which brings out[6] the question of individual rights, and that is what we now call the possible tyranny of the majority, by which I mean, if there is a stable majority—and by "stable" I do not mean a majority which does not change from one day to another, but one which can be based on ethnic grounds or religious grounds or all this kind of thing—and then what guarantee is there for the stable minority or minorities? That is a very important question of course, but [one] of which there is at least no

explicit discussion here, the reason being, I think, that Locke regarded the great danger as coming not from the majority but from oligarchic or monarchic groups. Locke's thought must be construed as follows. If you have a sufficiently extended society, you won't have a democracy, and such a society will be ruled in oligarchical fashion or however you would call it, but certainly not simply democratic[ally]. And the danger comes here from the government only and not from the people. One could say Locke was unduly optimistic, but[7] there is some reference later on[8], in the last chapter I believe, to the particular slowness of the people . . . of course one thing: they mustn't rule. But who claims they rule after the leveling has been disposed of? The danger comes rather from the oligarchic or monarchic principle. That, I think, was the point.

To repeat: I fully agree with the thesis that Locke is terribly confused. I mean, let me say that the two *Treatises*, simply read, are terribly confusing. The conclusion to Locke's confusion is not valid unless certain other things have been established.

Student: I was going to raise the question of the tyranny of the majority.

LS: I don't believe Locke regarded this as a serious problem, and those who have spoken in the meantime of the "iron law of oligarchy" of course would agree with Locke.[ii] You know, they would say [that] what you have in fact in each case is not the rule of the people but of the so-called elite; and therefore if that were true, there could never by a tyranny of the majority—which of course I would deny, because I think this notion is simply empirically wrong. There are democracies.

Now is there any other point you want to bring up? If not, then let us turn to chapter 14 on page 203. You see here in paragraph 159, on line 7 or so, Locke speaks of the common law of nature: The executive "has by the common law of nature a right to make a use of it for the good of society."[iii] And eight lines later he speaks of[9] that common law of nature which enables the executive to act according to its discretion. He calls it later on "this fundamental law of nature and government." This terminology calls for some comment, doesn't it? Why does he call it first "the common law of nature," and then "the fundamental law of nature and government"? Why does he call it "common"? Well,[10] according to this part of the argument, the law of nature is common because it is concerned with the preservation of the whole of mankind—in this sense common. But this is here replaced by a more precise formulation, this "fundamental law of nature and government"; that is, all the members of the society are to be preserved. The fundamental law of nature is the law of self-preservation. But it is also the fundamental law of government. The practical meaning of this is that the executive is enabled to use this discretionary power for the good of the people. He is enabled to do that by the fundamental right of the self-preservation of each which he has to consider, and by the fact that society as a whole is established for the sake of self-preservation. That is the ultimate justification of any kind of governmental action.

Now Locke then develops the reason why a prerogative is given to the discretionary power: because of the essential defect of law as law. You can indeed say that this is in a certain tension[11] [with] a later notion in which there should be *no* power extra-legally used under any conditions. Locke denies there is a contradiction. It is not a confusion. The point itself is of

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[ii] Robert Michels, *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy* (1911; English translation, 1915).
[iii] *Second Treatise*, sec. 159.

course very old, but it is important to note that Locke still accepts that. But how this common notion of Locke emerged you see very clearly when you turn back to paragraph 3, right at the very beginning, Locke's definition of political society, or political power, rather: the right of making laws and of employing the force of the community in the execution of such laws. Here the execution is limited. It is an execution of laws—that means of course it is a legal execution of laws—and the defense of the commonwealth from foreign injuries, which of course cannot be regulated by law, as we stated before. Here this creates the impression that in all domestic affairs all governmental actions are strictly and in every respect under law. Now Locke gradually brings in the important qualification: not only in foreign affairs but in domestic affairs, as well.

In the next paragraph, you see he speaks of the necessity of the use of that power for the good of the people, and that the people are the judges, the perfectly competent judges of whether the prerogative is used properly or not. He discusses here, in other words, the question of a possible conflict between the executive and the people. But there is another very interesting question: What about a conflict between the executive and the legislative? That he does not take up here yet. One point however becomes clear from this direct relationship of the executive in its discretionary power and the people: that there is an element of Caesarism admitted in Locke's thought. This executive acting for the good of the people, and here without any reference to the legislative,[12] will be judged by the people, not by the legislative. That is a very important element of Locke's thought, which of course is not predominant in the traditional interpretation of Locke. You see that there is also implied somehow in this argument if you read it by itself not only that the people are competent judges of the executive government, but also that the people are not particularly concerned with representative government. If they are intelligently and well ruled by the executive, they are satisfied with that. And Locke indicates the reason in the beginning of the paragraph: "It is easy to conceive that in the infancy of governments, when commonwealths differed little from families in number of people, they differed from them too but little in number of laws,"[iv] and so on. You can state this with some exaggeration but I think moving in the right direction: there is something archaic about the people. The people are fundamentally always the same. There is a certain popular attachment to princely government. The people are not progressive, in a word. The notion that the people are progressive is much later. The seed of progress and therefore the reason for the introduction of sophisticated parliamentary legislatives has to be sought elsewhere. I know that Locke makes remarks about the people in this sense in other works, but I do not know the references now.

Now let us turn to the next paragraph, 163. Will you read that sentence on page 205, the third sentence?

Reader:
Those who say otherwise speak as if the prince had a distinct and separate interest from the good of the community, and was not made for it—the root and source from which spring almost all those evils and disorders which happen in kingly governments.[v]

LS: Why not *all*? In other words, if a prince is certain that he does not have a distinct interest, is not the evil of princely government avoided by this very fact? Let us turn to paragraph 164, where Locke answers the question. Let us take the middle of the paragraph.

[iv] *Second Treatise*, sec. 162.
[v] *Second Treatise*, sec. 163. In the original transcript the passage is abridged.

Reader:
For as a good prince who is mindful of the trust put into his hands and careful of the good of his people cannot have too much prerogative, that is, power to do good, so a weak and ill prince, who would claim that power which his predecessors exercised without the direction of the law as a prerogative belonging to him by right of his office, which he may exercise at his pleasure to make or promote an interest distinct from that of the public, gives the people an occasion to claim their right, and limit that power which, whilst it was exercised for their good, they were content should be tacitly allowed.[vi]

LS: Did you notice how he called the opposite to the good prince?

Student: "Weak and ill."

LS: So he does not simply call him "ill." It works retroactively. If the bad prince is the weak and ill prince, then the good prince would have to be not only a good prince but also a strong prince. So in other words, some evil really comes from the weakness and not from bad intentions. That is what I mentioned about the importance of government. Let us turn immediately to the next paragraph where the subject is taken up again. Paragraph 165.

Reader:
And therefore, he that will look into the history of England will find that prerogative was always largest in the hands of our wisest and best princes—[vii]

LS: You see another addition to "good": "wise." So strength and wisdom have to be added to mere public-spiritedness or morality in order to make this possible. Locke does not emphasize this political question, which is no longer a legal question, because there is no legal solution to this problem. We want to have an executive who has the power to do good; that we need, which is given by an institution, say, a king. But that is not enough. If the king is weak, a dunce, we do not get the benefits. He cannot do good even if he has good intentions. Here is an essential limit of law, but politically of course of decisive importance. So Locke knew that a merely legal solution to this problem was not possible; that the legal arrangements are a kind of condition sufficiently good. The only thing you can say generally about civil society refers to the legal conditions, the legal arrangements within that society, say, the representative government and a relatively independent executive. But another condition, too, has to be fulfilled if you want to have good government, and that can no longer be guaranteed by law. But Locke saw that. And any fair discussion of Locke's political teaching has to take this into account.

In paragraph 166, let us read first the first sentence.

Reader:
Such godlike princes, indeed, had some title to arbitrary power by that argument that would prove absolute monarchy the best government, as that which God himself governs the universe by, because such kings partook of his wisdom and goodness.[viii]

[vi] *Second Treatise*, sec. 164. In the original transcript the passage is abridged.
[vii] *Second Treatise*, sec. 165.
[viii] *Second Treatise*, sec. 166. In the original: "partake," not "partook."

LS: Now in the last sentence of this paragraph he says: "prerogative is nothing but the power of doing public good without a rule." Now if we apply this for the understanding of the first sentence, it would seem to mean that arbitrary power is power without a rule. What follows then for God's government of the universe? If God's government of the universe—not of mankind in particular, by the way, in the universe—is a kind of model for the arbitrary power exercised by godlike, wise, and good princes, what would follow regarding God's government if God rules the universe without a rule? Locke speaks throughout the book of a natural law. This natural law has its source in God, but it does not guide God's actions. What was the traditional notion of the ultimate root of that natural law—the biblical notion, but not only the biblical notion?[ix]

Student: Nature?

LS: No. You could say that that is the content of natural law, but not the source.

Student: The nature of God.

LS: There is a more precise term for it.

Student: Divine law?

LS: No. Divine law is positive law. Divine law is revealed law. *The eternal law*. The eternal law is that law[13] which is God himself, but which also can be said to be the law by which God rules the universe. Locke's statement implies the denial of such an eternal law. Now let us turn to paragraph 195 and read the first two sentences.

Reader:
I will not dispute now whether princes are exempt from the laws of their country, but this I am sure: they owe subjection to the laws of God and nature. Nobody, no power, can exempt them from the obligations of that eternal law.[x]

LS: You see, "of *that* eternal law," which is really the natural law. That is the eternal law which Locke in a way recognizes. But that he calls it "*that* eternal law" means there is another eternal law of which people speak. This he tacitly denies in the passage which we have seen.

But still there is another, more immediate question. Locke speaks here of arbitrary power. In previous passages, for example in paragraph 137 toward the end, he had spoken of an arbitrary and absolute power. What is the difference between arbitrary and absolute power? Are they simply synonyms, or what? In paragraph 137 toward the end, Locke says, "arbitrary and at pleasure," which he does not apply to absolute. I just wonder whether absolute power doesn't mean discretionary power, but a power which in itself is used for the purpose of power, namely, for the good of society, whereas arbitrary power would not in itself have this relation, this essential relation to the good of society. That might very well be the difference. Because an absolute power, a power itself not regulated by law, is of course essential to government as such, because the legislative, the source of the positive law, is indeed said to be guided by the natural law. But we have also seen that the legislative is the *judge* of what

[ix] In the original transcript: "[? the biblical notion, but not only the biblical notion]."
[x] *Second Treatise*, sec. 195.

the authoritative interpretation of the natural law means, and therefore it is practically absolute. But in this respect I think Locke really agrees with Hobbes. He would only make this distinction—at least up to now I do not see a better interpretation—that an absolute power is a power no longer under law but used for the good of society, and it becomes arbitrary when this qualification is omitted. But I cannot say this with any degree of definiteness.

In paragraph 168, to which we may turn now, Locke discusses the question which he had not discussed before. Will you read that, at the beginning of paragraph 168?

Reader:
The old question will be asked in this matter of prerogative: But who shall be judge when this power is made a right use of? I answer: Between an executive power in being with such a prerogative, and a legislative that depends upon his will for their convening, there can be no judge on earth; as there can be none between the legislative and the people, should either the executive or the legislative when they have got the power in their hands design or go about to enslave or destroy them. The people have no other remedy in this, as in all other cases where they have no judge on earth, but to appeal to heaven—[xi]

LS: We may leave it at this for the time being. Here he speaks of the possible conflict between the executive and the legislative, as you have seen. The conflict can only be decided by the people. This is indeed very strange. Why is it strange? We have read a chapter before on the subordination of the three powers. What did he say there?

Student: That the legislative was the supreme power.

LS: So therefore there seems to be a perfectly clear legal situation here. In a conflict between the legislative and the executive, who has the say, according to the previous teaching? The legislative. There can be no question. Why does he not say that here?

Student: What if the legislative disagrees with the executive, and the executive prerogative dissolves the legislative so that it is not convening anymore? When it was convening, it claimed that the executive was wrong and it should be dismissed from office. But the executive simply dissolved it, which under law or under his prerogative he had the right to do . . .

LS: That is possible. That is such a case, if the legislative is no longer legally in existence, then power reverts to the people. That is a point.

Student: I think especially in the occasion when the legislative is not in session and the king refuses to call it into being, in such cases there could be no legal way for the legislative to act.

LS: Yes, perhaps that is a sufficient explanation of the passage.

Student: But then there is no quarrel between the legislative and the executive, though. If the legislative is not in being and the king refuses to call it into being, then there is no quarrel between the executive and the legislative. There is no legal body quarreling with the king. There may be a [. . .] feeling in the country that the legislative should be called.

[xi] *Second Treatise*, sec. 168.

LS: I have the feeling that there was a greater difficulty than that, which you did not come around to yet. Mr. —, what would you say?

Student: It seems that Locke has just now introduced the prerogative for domestic affairs in this chapter, which did not exist yet in the previous chapter. And it seems that the executive holds this prerogative from the people in the same way that the legislative holds its power of making the laws.

LS: In other words, the executive owes its—how shall I say? Take an example. If William is the king of England, that he owes to the legislative. But that the king has these and these functions—he has the functions inherent in the royal functions, which are as such not given by the legislative. That of course raises a very interesting question, that we have here a kind of power inherent in an office which is apparently not derivative from the powers of the individual. Locke would deny this. Locke would say that it is fundamentally the rights of the individual which are the basis of any governmental power, and any governmental power is derivative from certain powers of the individuals. It, by the nature of the case, splits on the government level, so that the king's discretionary executive power is still[14] derivative from powers naturally devolving in individuals. So he would dispose of that in this way. That could be.

Student: . . . The laws, any law, is not adequate to all the particular situations. Therefore the function of the legislative is to make laws. The legislative is incapable of completely fulfilling those functions which it derives from the primary natural right of the individual. Therefore, for civil society adequately to get fulfilled its functions, there is a necessary need for another very different kind of power.

LS: Very well. But this still means that the previous teaching of the unqualified superiority of the legislative must now be modified. There seems now to be agreement among all of you who have spoken.

Student: I was thinking that Locke probably made reference to a specific case here. There was a law passed during the Restoration that the Parliament was supposed to meet every three years. And Charles II did not call Parliament for five years [. . .] And this was supposed to be illegal. But then who could bring charges against him? The legislative was not in existence.

LS: Yes, that was the point you made first, which impressed me. But on later reflection it seems to me that it does not quite fit Locke's formulation because he speaks here, as you yourself point out, of a legislative which is in existence, a legislative that depends upon his will for their convening. Only the convening depends on his will, that it exists.

Student: What I meant to say was that there was a law passed by Parliament, by the king, and yet this law was being violated. It was made when the legislative was in existence. Of course this is an extreme case, but I think that was one of the things which Locke had in mind.

LS: But to stick only to this passage, I think what Locke says does not go beyond this particular case. Also, if you think of the point which Mr. —— mentioned, there is really . . . the unqualified supremacy of the legislative is now qualified by a certain equality of the executive and the legislative, and therefore there is no clearly legal situation to the

contrary. And Locke would say: That is of course deplorable, that there is no clearly legal situation, but the alternatives are worse. The alternatives would be either to vest all powers in the monarch, and then the danger of tyranny is very great. That depends entirely on whether an accident would give you a good or wise king, or a weak and ill king. Therefore you must have this great guarantee supplied by a fundamentally popular representation in the legislative assembly. But on the other hand, if you make the legislative unqualifiedly superior, you introduce other dangers. For example, think only of the implication of the power of war and peace and of alliances, which according to Locke have to be lodged not in the legislative, not in the assembly, but in an executive, by which he understands fundamentally a monarchic executive: one man. Now the infinite power which this puts into the hands of the executive is of course obvious, because it can get out of all kinds of dependencies on the legislative by creating a situation of war by all kinds of means. That is the power in this respect which Roosevelt is said to have done, according to his enemies, through Pearl Harbor. But let us regard this as a true or a fictitious example; it doesn't matter, because the possibility of that exists.

So there is no way around this difficulty. Either you make large assemblies responsible for foreign policy, and then you are licked before you begin—that is Locke's implicit argument—but if you have to give this tremendous power of war and peace to one man, then you create another danger by this fact. That is undeniable. Beyond this uneven balance of the somehow divided power, divided between the executive and the legislative[15], giving an edge to the legislative but not a complete preponderance, you cannot get a practical solution which is good for the life, liberty, and property of the people. I see no other way out. And it makes sense politically speaking, because[16] to say that every fundamental solution of political problems, every theoretical solution, must exclude *a priori* the possibility of a deadlock, I do not see the necessity of that. Whether the possibility of avoiding a deadlock, or the alternative solution [. . .] a revolution, whether this is truly that you can get then still a universally applicable arrangement such as Locke is trying to work out. Perhaps it is wrong to expect perfectly elegant solutions to such problems. But that one cannot call a confused solution; one can only say a complicated one. But the complications have very solid reasons.

Student: I find that in Locke's [. . .] the king was so often considered as using his prerogative for an interest distinct from that of society. You could vest him with the power of war and peace, and yet in almost every facet of this prerogative he was dependent in some way on Parliament. If he could take the country to war, then he would have to call Parliament to get money to run the war. And if Parliament and the country thought he was[17] [pursuing] his [distinct] interest[18], then they would simply refuse supplies.

LS: Yes. But the question is, if the country is attacked and you do not know, that is perhaps not so visible to everyone how this attack was brought about. If he begins a war, say, as Henry V began the war against France on the basis of this alleged [. . .] the Parliament could have denied supplies. But if another country begins an attack by the king of England having maneuvered the country into such a position, I do not believe they can in all cases. Now in this same paragraph, in the middle.

Reader:

And where the body of the people, or any single man, is deprived of their right, or is under the exercise of a power without right and have no appeal on earth, then they have a liberty to appeal to heaven whenever they judge the cause of sufficient moment.[xii]

LS: You see the change of the singular to the plural: "The body of the people, or any single man." The *single man* does not have the right, *they* have the liberty. Why? Let us see a bit later.

Reader:
And this judgment they cannot part with, it being out of a man's power so to submit himself to another as to give him a liberty to destroy him, God and nature never allowing a man so to abandon himself as to neglect his own preservation; and since he cannot take away his own life, neither can he give another power to take it.[xiii]

LS: You see he speaks now of the individual. And now the conclusion.

Reader:
Nor let any one think this lays a perpetual foundation for disorder; for this operates not till the inconvenience is so great that the majority feel it and are weary of it and find a necessity to have it amended.[xiv]

LS: Let us leave it here. So in other words, the right of the individual under abnormal situations—by "abnormal" I mean usurpation, tyranny, or arbitrary government; this works only under abnormal conditions—the right of the individual can find an effective guarantee only if the majority go with the individual. The individual himself is helpless; there is no effective guarantee whatever. I am aware of the fact—and I thought you were to try to bring that out, but you did not do that—that there is a great problem involved between individuals and society. An antagonism. Let me state it this way. Locke starts from the right of the individual, and this right of the individual leads to the formulation of the demand that government must be related to consent. This right of the individual survives in society to that extent, that everyone is free in principle to leave that society again, provided that he restores that property which he owns only by virtue of that society. So the absolute sanctity of the individual seems to be perfectly preserved. The difficulty here is this: How *can* there be a society if that is the whole social process? Must there not take place a transformation, a revolution, a continual change of the situation in which the common good, the good of the society, has the precedence over the individual? This problem was never clearly stated in Locke, but he cannot have been unaware of it, as is indicated by the motto of the *Treatises of Government*: *Salus populi*, the safety of the people, not the individual, should be the supreme law. But there was one man who knew Locke very well and who stated the problem with amazing clarity. Who was that? Does anyone remember? I mentioned that before. I phrased the question with a view to the fact that I have the answer, and that is somewhat unfair. It was Rousseau.

Now Rousseau states the problem [. . .] in these terms: [the] unobligated, individuals in no way obliged to anyone else, unite for their self-preservation. This union requires the complete surrender of the power of each to the community. If that community and the power of the

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[xii] *Second Treatise*, sec. 168.
[xiii] *Second Treatise*, sec. 168.
[xiv] *Second Treatise*, sec. 168.

community is properly constructed, i.e., if it is democratic, then they can be sure to get back what they brought in, the same right of self-preservation and so on, and so on—[xv] . . . do I become a true citizen in actual fact? Now part of the [. . .] is this: How is this transformation of the individual, the natural man, into the citizen to be effected? The first solution is along these lines. It can only be effected in a society I can regard as just, i.e., in which I have a stake in the making of laws—i.e., a democracy. Now how does this come about? I think only of myself. Good. And in this spirit I enter the democratic assembly. And one desire that I have very strongly is: *no taxes*. I don't want to pay taxes; let the others pay. But here the mechanism, the central mechanism of government or of democracy, enters. Because if I want to make any suggestions in the assembly, I have to give it the form of a law. So I cannot directly say: I don't want to pay taxes. I have to say: There ought to be a law that *no one* should pay taxes. And then I come to my senses. So the mere fact that every individual will, to be expressed politically, must take on this form—the law must be generalized, as Rousseau puts it—is the fundamental premise. But clearly that does not work universally, as you can easily see from [. . .] The law which treats with equal impartiality the rich and the poor would be . . . But that is not sufficient. What is the real cure, according to Rousseau? Since this beautiful legal mechanism is not sufficient, how is the transformation to be effected?

Student: The executive.

LS: The executive comes in secondarily; the sovereign power is vested unambiguously in the direct democratic assembly, the parliament. No. There is a chapter called "The Legislator," or "Of the Legislator," in the *Social Contract.*[xvi] The legislator is a wise man, an individual who has not, strictly speaking, legislative power: his codes must be adopted by the citizen body [. . .] He is the one who frames the code. Now this legislator, his main function is not so much to frame a code as to do something to the minds of the people so that they become citizens, and these [. . .] natural law. And what is that, in one word?

Student: Religion.

LS: Religion; what Rousseau called "civil religion." Without a certain form of religious faith—which from Rousseau's point of view is not necessarily true, that is an important point—this transformation, that man prefers the common good to the private good, will not be achieved. In Locke we do not find any discussion of that. But that Locke had some awareness of a transformation which is necessary to take place, by virtue of which the common good takes in fact precedence of the good of the individual, that I am inclined to think. But there is no specific discussion.

Rousseau also uses other equivalents for this transformation; for example, customs. You know, those things which are now a matter of course in social science, the things which account for social cohesion, and which go beyond self-interest and are distinguished from self-interest. To use a somewhat ambiguous term, a certain socialization of the presocial natural individual is the essential condition of society. That means, in a way, the end of this simplistic individualism which Hobbes had introduced—not created, but which he had reintroduced with such great force—and which Locke also accepts but I think with a greater awareness of the difficulties than Hobbes had.

[xv] There is a break in the tape at this point.
[xvi] Rousseau, *On the Social Contract*, 2.7.

Let us turn to the next chapter, which seems to be unnecessarily repetitious, because there is nothing there which had not been stated before: "Of Paternal, Political, and Despotical Power Considered Together." In such cases it is absolutely necessary, it seems to me, to compare carefully this statement with the earlier statement in order to see why Locke really regards this as necessary to make this repetition—although there are only three pages, but still . . . Everyone would perhaps know the content of this chapter from what went before. Did any one of you take the trouble of reading this assignment and make some observations whether there is anything in here which throws some light? Well, if that is not the case, I leave it at the question. But I must say, every one of you should be dissatisfied with himself or herself if he or she does not see what this particular chapter teaches, what has not been taught *ad nauseam* before. Locke is repetitious, surely, but not here in such a way.

We know one point, which I believe we have seen. That came out earlier, in the center of paragraph 170, where he speaks of parental or paternal power. He says: "there is, as I have proved, no reason why it [paternal power—LS] should be thought to extend to life and death at any time over their children more than over anybody else."[xvii] Now the parents *do* have then a power of life and death, but not a specifically parental power, namely, the power derivative from the right of self-preservation, which always includes the right of self-defense, and therefore, in the last analysis,[19][a] power of life and death. You see also, when he speaks of the things which the children owe to parents, "respect, honor, gratitude, assistance, and support," he gives gratitude a central place, and that again shows what I mentioned before, that the duties which grown-up children owe to their parents are not different from the duties which every benefited man owes to his benefactor. So this duty is reduced to the general duty of gratitude, which along the lines of this argument would have to be conceived as one of the essential conditions of people living together, as Hobbes said, in a state such as this.

In paragraph 174, Locke says again that absolute dominion is inconsistent with civil society. That he has said before, in paragraph 94. That is in chapter 7, and here we find a return to that. In the meantime, that has become somewhat obscure, whether absolute monarchy, for example, i.e., the vesting of the legislative power in one man who would at the same time be the executive, would not be possible according to natural law.[20] I think that ultimately Locke denies that this is compatible, but there is a certain difficulty, [and] he makes some allowance: I suppose under certain conditions that it can be done.

Now we come to the chapter on conquest. This chapter has been alluded to before in paragraph 104, when he says that government having its origin in consent applies to the governments that were begun in peace, therefore leaving[21] [open] the possibility [that] maybe governments that were begun in war were not based on consent. But that he takes up now in our chapter.

What is the general situation regarding conquest? Locke establishes here a strict natural law doctrine of conquest. It must be a natural law doctrine, and cannot be a legal doctrine in the narrower sense. Why?

Student: War is something which takes place in a state of nature.

LS: States as such are in the state of nature. Therefore there cannot be positive law between them, because a positive law presupposes subordination of the bodies concerned to a common

[xvii] *Second Treatise*, sec. 170.

legislative. Therefore there cannot be positive law between states. But that leads to a further complication: What is the character of the state of nature? Is the state of nature a state of peace, as Locke says to begin with, or is this not so simple?

Student: A state of peace can become a state of war.

LS: In other words, it becomes extremely difficult to distinguish, to put it cautiously, between the just and the unjust war in the state of nature, and therefore the distinction between the just and the unjust conqueror becomes very complicated. I don't go into the study by Sir Richard Cox on Locke's theory or formulation, which must be out very soon. This is the chief subject, and he has put all the evidence together.[xviii]

So there is a great difficulty here, an enormous practical difficulty to which Locke barely alludes in this chapter: to distinguish between the just and the unjust conqueror. But he does not do away with another problem with which he is concerned, namely, assuming that he cannot make a clear distinction between the just and the unjust conqueror, how far to extend the right of *any* conqueror, just or unjust? This question certainly remains. You see in the center of paragraph 176, if you will read that.

Reader:
The only difference is, great robbers punish little ones to keep them in their obedience, but the great ones are rewarded with laurels and triumphs, because they are too big for the weak hands of justice in this world, and have the power in their own possession which should punish offenders.[xix]

LS: Let us stop here for one moment. Let us think also of the definition of the statement regarding natural law which occurs near the beginning. In paragraph 7, center, page 124: "the law of nature would, as all other laws that concern men in this world, be in vain [you see, by the way, the reference to "this world" on both occasions, a term which does not occur so often in Locke—LS] if there were nobody that in the state of nature had a power to execute that law."[xx] Now if the great robbers preponderate in the state of nature—by which he means the conquerors in other states—is the law of nature not in vain as far as the relations between the states are concerned?

At the beginning of paragraph 177: "But supposing victory favours the right side," i.e.,[22] supposing that victory goes to the just conqueror, what happens? We do not have to read it; let us read paragraph 180, because that is of special importance.

Reader:
Thirdly, The power a conqueror gets over those he overcomes in a just war is perfectly despotical. He has an absolute power over the lives of those who, by putting themselves in a state of war, have forfeited them, but he has not thereby a right and title to their possessions. This I doubt not but at first sight will seem a strange doctrine, it being so quite contrary to the practice of the world—[xxi]

[xviii] See session 6, note v. The honorific is probably a bit of Strauss's whimsy: Cox spent some time at Oxford researching his book, and this may have led Strauss to call him "*Sir* Richard."
[xix] *Second Treatise*, sec. 176.
[xx] *Second Treatise*, sec. 7.
[xxi] *Second Treatise*, sec. 180.

LS: Now Locke says very rarely of[23] [any doctrine of his] that it is a strange doctrine, and therefore these passages have to be considered especially. A "strange" doctrine means of course also a novel doctrine. The right of conquest was generally admitted, and in the fullest sense of the term. So these passages must therefore attract our special attention. How important that issue is you can see from the following fact,[24] [which] has something to do with Locke's use of the Bible. What were the classical biblical passages regarding politics, always quoted in all political texts up to Locke's time, and beyond even?[25] [Be] subject to the higher powers?[xxii] [. . .] Well, what were the classic passages for Locke? These passages are never quoted by Locke in *Civil Government*, but which biblical passage is his favorite? The term occurs all the time. After he has quoted it in full, he uses the phrase all the time: "the appeal to heaven." Where does this come from?

Student: [. . .]

LS: The Book of Judges.[xxiii] What does Locke use it for?

Student: Any time he wants to appeal to heaven for support.

LS: Still, what is the most important field of its application in Locke's discussion?

Student: [. . .] to judge on . . .

LS: Yes, and especially, I think, also in the relation between the government and the people. What does it mean in the original context? To what does it apply in the original context in Judges?

Student: Between two states, doesn't it?

LS: Sure. In other words, it really applies more precisely to the right of conquest, if you will look it up. Of course the notion underlying the Book of Judges as regarding the right of conquest differs greatly from the Lockean notion. I mean, the conquest of Canaan as described in the Bible did not proceed according to the law of nature as developed in chapter 16. So Locke knew what he was doing. It was not only directed against Christian and other natural law teachings, but it was directed against the whole biblical notion itself. But there is a difficulty. Let us read the last sentence of paragraph 180.

Reader:
there being nothing more familiar in speaking of the dominion of countries than to say such a one conquered it, as if conquest, without any more ado, conveyed a right of possession. But when we consider that the practice of the strong and powerful, how universal soever it may be, is seldom the rule of right, however it be one part of the subjection of the conquered not to argue against the conditions cut out to them by the conquering sword.[xxiv]

LS: Is this a grammatically good sentence? There is a conditional clause, not followed by—what is the English term for the apodosis, the main clause? What is the special name in English for the main clause of a conditional sentence?

[xxii] Perhaps a reference to Romans 13:1 ("Let every soul be subject to the higher powers"), on which see *Natural Right and History*, 215.
[xxiii] Judges 11:27.
[xxiv] *Second Treatise*, sec. 180.

Student: The principal clause.

LS: All right. The principal clause belonging to that condition does not appear to be there. One would naturally think after the first clause to find: "we have to find the rule of right in reason." The practice is seldom the rule of right, and therefore we have to find that rule in reason. But one could of course also say the conclusion might be: We cannot expect much justice in the world. At any rate, Locke does not tell us this. The two things would go together: the law of reason would be in vain because those who *could* act reasonably, who are strong enough to act according to reason, do not act according to reason, as a rule. But this is not wise to say. That thought is indicated by Locke by referring to the situation of conquered people: "one part of the subjection of the conquered" is "not to argue against the conditions cut out to them by the conquering sword." Surely.

There is no question in my mind that Locke is here thinking of the Bible, the Old Testament concept of conquest, while writing this chapter. I will only indicate a few . . . for example, at the beginning of paragraph 182: "because the miscarriages of the father are no faults of the children, and they may be rational and peaceable, notwithstanding the brutishness and injustice of the father." This reminds me of the Old Testament remarks about the fourth generation, these [. . .] later on corrected or changed in Ezekiel.[xxv] Let us see paragraph 183, end. That is an important point, page 216. What is the question? Otherwise we will not understand. "Here then is the case."

Reader:
Here then is the case: the conqueror has a title to reparation for damages received, and the children have a title to their father's estate for their subsistence. For as to the wife's share, whether her own labour or compact gave her a title to it, it is plain her husband could not forfeit what was hers. What must be done in the case? I answer: the fundamental law of nature being that all, as much as may be, should be preserved, it follows that if there be not enough fully to satisfy both, viz., for the conqueror's losses and children's maintenance, he that hath, and to spare, must remit something of his full satisfaction and give way to the pressing and preferable title of those who are in danger to perish without it.[xxvi]

LS: But let us suppose they do not have "to spare." Let us assume a case of overpopulation: a tribe conquering the land of another tribe which just could barely eke out a living. What then? What would follow from the law of nature in such a case?

Student: Self-preservation.

LS: Surely, but what would it lead to?

Student: The women and children would be the ones who had the loss. The conquerors would be the gainers.

LS: Yes. In other words, the one who would be the stronger. One must never forget that, that Locke saw that. But he was very delicate about these matters, which in the long run is good

[xxv] Strauss is referring to Exodus 34:7: God "visits the iniquity of the fathers upon the children, and upon the children's children, unto the third and to the fourth generation" and Ezekiel 18:20: "The son shall not bear the iniquity of the father."
[xxvi] *Second Treatise*, sec. 183.

because the lessons of what men might do in extreme situations are so easy to learn. And we are much better reminded of the more respectable rules of which we should think more.

Paragraph 184. I cannot develop this theme. Unfortunately Mr. Cropsey could not be here. You note here that all money can be confiscated, but I believe this also applies to mines, to gold and silver mines. You see, only the cultivated land cannot be taken away; and if Mr. Cropsey's remark about Locke's imperialistic vision is correct, something like the Spanish empire in South America—these possibilities for the British—then of course Locke's natural law of conquest would perfectly permit that, because there are only acquisitional and conventional things, gold and silver, which can be confiscated without any trouble. Only the land cannot be.

Student: Mr. Cropsey seemed to indicate that Locke had considered the possibility of money prior to the civil state. He talked about *wampum* among the Indians . . .

LS: Yes, that was the point which was raised by Mr. ——. I did not think of it, but you are right.

I refer you to paragraph 190 on page 218, that everyone has a natural right "before any other man, to inherit with his brethren his father's goods." That is in general conformity with what Locke says in the *First Treatise*, but you must also consider that according to paragraph 87, end, of the *First Treatise*, the father has a right to dispose of his property as he sees fit, so that the utmost one could say is that if the father dies intestate, the children inherit. But the father may very well will his whole property away. The right of the children does not go so far. Let us read paragraph 193, if there is still time.

Reader:
But granting that the conqueror in a just war has a right to the estates as well as power over the persons of the conquered, which, it is plain, he hath not, nothing of absolute power will follow from hence in the continuance of the government, because the descendants of these being all freemen, if he grants them estates and possessions to inhabit his country—without which it would be worth nothing. Whatsoever he grants them they have, so far as it is granted, property in.[xxvii]

LS: You see, that is the kind of casual remark of utmost importance, where Locke switches from the legal consideration to the prudential consideration: "without which it would be worth nothing." To grant people property and rights in their property is simply good politics. Every prince has an interest in having a very wealthy and prosperous country, but he won't get it if the individuals do not have a great interest in developing the country, and they won't have that if they do not have property. It is possible to present the crucial point of Locke's political philosophy without a reference to natural law proper. That would be possible: the goodness of the institution of property for the well-being of the whole. This property must be understood as one which should be unlimited as far as acquisition is concerned. Not only what Aristotle says, that without private property there will be great misery or want, but for Locke that includes also the right of unlimited acquisition.

There are other very important points into which I cannot go. There is another theological reference in paragraph 195 which you might see. We have referred to another little part of

[xxvii] *Second Treatise*, sec. 193.

this passage. He quotes here implicitly Isaiah 40, verses 15 and 17: "as a drop of the bucket, or a dust on the balance . . . nothing."[26] The sentence seems to speak of princes who are "in comparison of the great God, but as a drop of the bucket, or a dust in the balance . . . nothing." But he adds, "with all their people joined to them." Now in the verse in Isaiah itself, these expressions, "drop of the bucket" and so on, are directly applied to the *nations*. I cannot develop that now.

In the next paragraph, we find an explicit quote from the Bible, from 2 Kings. I mention here only the fact that "it is very probable to any one who reads the story of Ahaz and Hezekiah attentively," that I have read them, attentively, and not found anything.[xxviii] But there may of course have been a traditional interpretation of that to that effect which I do not know. That we cannot possibly in this advanced stage go into.

A few remarks only on the chapter on tyranny, chapter 18. That tyranny is government without law and for the private good of the tyrant is a very common old definition, which you find in Xenophon and in Plato. Then he quotes King James, three different quotations, as an authority regarding tyranny. If even a king says that this is a tyrant, all the more can a subject like Locke say that. You see, Locke speaks of the law; but King James, in his wisdom as we see in the central quotation, speaks of *his* law, i.e., the king's law, which changes the situation materially. (In the last line of the second quotation and the seventh line before the end.) I mention this only in passing. In other words, Locke blurred the distinction between absolute monarchy and monarchy limited by laws which the king cannot change, whereas James really had in mind absolute monarchy unqualified. King James conceived of his laws as a paction, comparing it with the paction of God with Noah after the deluge. In other words, that is a purely unilateral act of the king, and in no way a law proper . . .

Paragraph 203. Here the problem of the individual is raised again. Will you read that please?

Reader:
May the commands, then, of a prince be opposed? May he be resisted as often as any one shall find himself aggrieved, and but imagine he has not right done him? This will unhinge and overturn all polities, and, instead of government and order, leave nothing but anarchy and confusion.[xxix]

LS: So the individual must *not* remain the judge. This "imagine" of course concerns the other case where he rightly believes that he has not right done to him. We have seen the previous discussion: if the majority does not go along with it, the thing is entirely irrelevant. Now let us read the beginning and end of paragraph 205.

Reader:
First, As in some countries, the person of the prince by the law is sacred; and so, whatever he commands or does, his person is still free from all question or violence, not liable to force, or any judicial censure or condemnation. But yet opposition may be made to the illegal acts of any inferior officer or other commissioned by him, unless he will, by actually putting himself into a state of war with his people, dissolve the government, and leave them to that defence

[xxviii] *Second Treatise*, sec. 196.
[xxix] *Second Treatise*, sec. 203.

which belongs to every one in the state of nature; for of such things who can tell what the end will be?[xxx]

LS: Now let us read the end only of this paragraph.

Reader:
Should any prince have so much weakness and ill nature as to be willing to do it, the inconvenience of some particular mischiefs that may happen sometimes, when a heady prince comes to the throne, are well recompensed by the peace of the public and security of the government in the person of the chief magistrate thus set out of the reach of danger; it being safer for the body that some few private men should be sometimes in danger to suffer than that the head of the republic should be easily and upon slight occasions exposed.[xxxi]

LS: You see again this considerable qualification of the right of the individual which Locke admits as inevitable. That is of course applied here not only to abnormal conditions, to the condition of nonconstitutional government, but to constitutional government as well.

I note one more point in conclusion, that in paragraph 208, middle, regarding the individual: "if it reach no farther than some private men's cases, though they have a right to defend themselves and to recovery by force what by unlawful force is taken from them, yet the right to do so will not easily engage them in a contest wherein they are sure to perish; it being as impossible for one or a few oppressed men to disturb the government," and so on.[xxxii] So again, that is only a repetition of what he has said before.

I note that in paragraph 209, and in 210, we find a quite surprising reference to religion, that when the people feel themselves in danger, and not only regarding their "estates, liberties, and lives . . . and perhaps their religion too."[xxxiii] And in paragraph 210, center: "if they see several experiments made of arbitrary power, and that religion underhand favoured, though publicly proclaimed against, which is readiest to introduce it." These are of course obvious references to 1688-89, but here the book approaches a concept independent of the Glorious Revolution. We must note, however, the rarity of the references to religion, and that it comes up only in this particular context—"and *perhaps* their religion too"—how very absent the consideration of religion is from Locke's doctrine of civil government. The function of civil government is the protection of property, which includes life and liberty. It has in itself nothing to do with religion.

Now here I may say a word about this strange repetition in chapter 15, on pages 208 and 209, where he merely repeats what he has said before on paternal, political, and despotical power. What strikes one most, at least me most, is this: that both where he speaks of paternal and despotical power, he mentions God. He does not mention God when speaking of political power. That, I believe, is intelligible in the light of the whole book. The political power proper, which means a kind of power which is entirely derivative from the subjects, cannot be understood in the terms of religion, that is to say, in terms of the belief in God as ruling men entirely by his own power, and in no way by derivative power. That would seem to be a plausible interpretation.

[xxx] *Second Treatise*, sec. 205.
[xxxi] *Second Treatise*, sec. 205.
[xxxii] *Second Treatise*, sec. 208.
[xxxiii] *Second Treatise*, sec. 209.

So next Wednesday I will see you, and that will be our last session.

[1] Deleted “Hobbes’s.”
[2] Deleted “then.”
[3] Deleted “because government.”
[4] Deleted “discussion.”
[5] Deleted “discussion.”
[6] Deleted “of.”
[7] Deleted “this people.”
[8] Deleted “to this.”
[9] Deleted “what is.”
[10] Deleted “because.”
[11] Deleted “to.”
[12] Deleted “and.”
[13] Deleted “by which God himself.”
[14] Deleted “a.”
[15] Deleted “with.”
[16] Deleted “even—.”
[17] Deleted “using.”
[18] Deleted “distinctly.”
[19] Deleted “of.”
[20] Deleted “But.”
[21] Deleted “up.”
[22] Deleted “assuming.”
[23] Deleted “the doctrine of hate.”
[24] Deleted “—and that.”
[25] Deleted “These.”
[26] Deleted “But this applies here.”

On Locke's *Second Treatise*, chapters 17-19
Session 16: March 12, 1958

Leo Strauss: That was a thoughtful paper.[i] You tried to understand the plan of the chapter and also to identify the specific difficulties and contradictions of this part. Quite a few of the difficulties which you mentioned are real. I mean, I too noticed them. The only question is: What is the solution to them? That I would like to know.

You began your paper with the remark that most of the subjects of chapter 19 had been mentioned. Chapter 19 is a kind of restatement of points made earlier, and yet it is not an identical repetition but there are several modifications. One important point which you mentioned is the silence about the prerogative in the last chapter, which is certainly true. Why did Locke do that? What is your explanation of that? You did not assume, as Mr. —— did last time, that Locke was not aware of the fact that he contradicts himself. You assumed that he knew what he was doing. Then you have to answer the question why he did that. What did he expect to achieve by this silence about the prerogative, for example? You may answer this question in two ways, either about the prerogative in particular, or in general. Otherwise this is not satisfactory, as you can see; otherwise the possibility remains that Lock was just dumb. To overstate the alternative position: either he was dumb or he had guile. If he had guile, you must show in what the guile consists in this particular case.

Student: It would have weakened his argument considerably in the passage in which he did contend that the legislative can be altered in several ways. "The prince sets up his will in place of laws": he wanted to show the prince as an extreme.[ii] If he allowed the prince certain prerogatives and allowed that the prince could act against the laws for the public good, it would be destroying his own argument.

LS: Well, a bit more precisely, it would be difficult for the people generally speaking to decide whether the prince is using or abusing his prerogative. Therefore you reduce it to a simple case: Is there a clear breach of the clear law, or not? That is true up to this point. But if I may now turn to the general implication of your question: Locke conceals the weaknesses of his position. That in itself would mean that Locke was a cheap politician, because every politician does that. But I would not regard that as a sufficient answer, because Locke was really not a politician. I think he [saw] clearly enough the difference from the official weak position. If Locke was really a superior thinker and nevertheless wanted to conclude his book on a peaceful or simple note, and therefore wanted to conceal the weakness of his view, what could have induced him to do that? I know my question was very badly phrased because it contains in a way an answer. Locke was aware of certain weaknesses. Now a really serious thinker should expose the weaknesses, or rather, he should abandon a weak doctrine and replace it by a good one. So how can this be understood?

Student: The public good itself [. . .] Locke might have a very clear argument if he tried to balance this prerogative out, but it might not safeguard the people as well as would a doctrine

[i] Strauss responds to a student's paper, read at the beginning of the session. The reading was not recorded.
[ii] See *Second Treatise*, sec. 214.

that is unstable. In other words, he could not justify the rebellion of 1688 very well, perhaps, unless he could prove the prerogative had been used against the common good.

LS: No, I think he regarded this differently; that 1688 is perfectly capable of other justification. I mean, not every particular reason given in the Declaration of[1] [Toleration], the illogicalities of which have been previously pointed out by Macaulay—you probably know that. Macaulay says the major and minor premises contradict each other, and each of them contradicts the conclusion. His justification is that this was not a logical argument at all, an academic argument, but that they were concerned that the major should fetch one hundred votes, and the minor another hundred votes, and the conclusion still a hundred other votes—that logic wasn't needed there.[iii] Locke of course could not accept such a statement at a theoretic stage.

But to come back to the fundamental point, not limiting it to the particular issue of either 1688 or else of the prerogative. You said, I think you implied, the answer is the public good. Could Locke not have said this, "The solution which I suggest is the best possible solution, but it is by no means unqualifiedly good"? As every human arrangement, it has its defects. Now he made clear the defects in previous sections. But emphasizing the weakness would mean to create a disturbance in the ordinary reader's mind which would do no good to anyone. So Locke might very well have thought that the scheme—not the scheme of 1688-89, but the scheme which he presented here—was the best solution, and still know that it suffered from certain defects, defects from which, for example, an absolute monarchy did not suffer. But still, on an overall balance by a sensible man, this scheme would be preferable to an absolute monarchy.

He had indicated the difficulties clearly enough. For example, this strange relation: the legislative is superior to the executive, and it is *not* superior to the executive—which creates an impasse, obviously; but still, everything else considered, that is the best arrangement you can hope for on earth. And yet under certain conditions it can be inferior to other arrangements, and it has its own limitations. So that would be, I think, perfectly intelligible, and especially since, according to an old observation of forensic orators, primarily the attention is strongest at the beginning and at the end. You must have seen this when you have been listening to a lecture. In the moment when the fellow says, "Now I come to my conclusion," everyone becomes awake again after a slumber which started, say, after the first twenty minutes. That is a common experience, and no one should be ashamed of that. And in the center,[2] close[r] to the center, say in chapter 15, he makes certain difficulties very clear, while at the conclusion . . . I have seen people, even sometimes very learned people, who, when reading a book or even reviewing books, read only the first and last chapters. There seems to be a deep root for that in human nature: you concentrate at the beginning and at the end.

To come back to Miss ——'s paper, Locke could very well have admitted that his scheme had some flaws, and still is the best scheme. Then, that he would play down these flaws at the most visible places and indicate them at the middle, there is no difficulty in that. Now to come back to more specific places, you made much of the fact that Locke in a given place says "*the* form of government," instead of "*a* form of government." Here I believe you are wrong. What did you want to say?

[iii] The reference is to Macaulay's discussion of the Toleration Act of 1690. See his *History of England from the Accession of James II*, vol. 3 (Philadelphia: E. H. Butler, 1856), 25-30.

Student: Just in reading the statement in which he sets this up, in paragraph 213: "This being usually brought about by such in the commonwealth who misuse the power they have, it is hard to consider it aright, and know at whose door to lay it, without knowing the form of government in which it happens."[iv]

LS: Sure. Because in every case a revolution takes place against a specific government—a democracy, an oligarchy, a monarchy, or a combination; and therefore, in order to know who misuses the power, you have to know who is supposed to possess the power. For example, in an absolute monarchy, there is no misuse of the power if the king alone makes the law, whereas in a government like the one described in the sequel, the British government, it would be a clear misuse of power if the king, without parliament, were to [. . .] the law. I think that is perfectly simple.

Student: But in paragraph 218, he contends that "in such a constitution as this the dissolution of the government in these cases is to be imputed to the prince." The abuses are to be imputed to the prince.

LS: Sure, because[3] from paragraph 213 on, let us suppose, he speaks of the British Constitution, and he discusses in a general way, without mentioning any names,[4] 1688. Why is James II, and not the House of Commons, responsible for misuse of power? That is very simple, I think. Here you were, I believe, over-thorough.

You noted also in paragraph 217 that he introduces here the legislative in addition to the prince, whereas in the preceding three points he had only spoken of the prince. That is certainly a legitimate question. How did you answer that question? Locke did not add "by the legislative" for nothing; he must have had his reasons. Why did he do that here? Was there any attempt made by the British parliament, apart from James II, to deliver the people into the subjection of a foreign power? That the parliament tried to sell England to the French, or to the Spanish? I am not aware of that. So what does he mean by that? That is an absolutely necessary question.

Let us turn to paragraph 219, beginning, another place where you made a remark. You noted rightly the correspondence of paragraph 219, beginning, and 221, beginning. In paragraph 219 he had spoken only of the executive power. In 221, beginning, he adds "the legislative": "the legislative *or* the prince." I would cautiously suggest that the addition of "the legislative" in paragraph 217 foreshadowed this happening in paragraphs 219 and 221, beginning. Of course that means only pushing back the question, but that is perfectly all right provided you do not forget the question. And of course the solution depends ultimately [on] whether the question can be answered on the basis of paragraphs 219 and 221. That we must see later.

Paragraph 224, end: that was the part where Locke did not give any examples, as you put it, where he says—what is the point?—the people "will wish to seek for the opportunity," namely, "to ease themselves of a burden that sits heavy upon them . . . He must have lived but a little while in the world who has not seen examples of this in his time, and he must have read very little who cannot produce examples of it in all sorts of governments in the world."[v]

[iv] *Second Treatise*, sec. 213.
[v] *Second Treatise*, sec. 224.

In other words, in all sorts of governments in the world we have seen that the people will rise if they are oppressed too much. He did not wish to give examples, and you are dissatisfied with that. Why are you dissatisfied? Are there not an infinite number, innumerable numbers of that? Or did you read it properly?

Student: Well, from the beginning of paragraph 224, "for when the people are made miserable, and find themselves exposed to the ill-usage of arbitrary power," and in the middle, "the people are generally ill-treated, and contrary to right."

LS: In other words, there is no way of preventing people by any political theory from rising against an oppressive government. And that is according to Locke proved by examples from all kinds of governments; and he does not give any specific examples because examples abound. Could this not be the truth? Nevertheless, I think you hit on a real point. I think of a parallel to this remark in Spinoza's *Theologico-Political Treatise.* Spinoza's thesis is that there are certain fundamental rights, and one of the most important for Spinoza in this particular work is the right to philosophize, as he calls it; let us say the right of free speech in general. And he says this right cannot be taken away, because[5] what is going on *here* behind any physical part of the body is not subject to any control. Therefore, thought is by nature privileged. That has been repeated time and again. But Spinoza of course did not have to wait for certain brainwashing techniques, discovered or rediscovered recently, to know this is nonsense, because people's thoughts can be manipulated without their being aware of it and therefore the freedom of thought is not so much guaranteed by our nature as has been implied. Spinoza in his argument for freedom of speech says: Because of this impossibility to suppress thought in every individual, violent rule has never lasted long. A quotation from *Tractatus*.[vi] But if you turn to the very practical book, you see that he says just the opposite: it can be done for a very, very long time. Proof: the Turkish Empire, which lasted for many centuries and did not have any freedom of thought.

So therefore let us apply this to Locke's case.[6] The argument could be said to consist in this. There are very *few* examples, relatively speaking,[7] [of] popular opposition. I mean, I have heard now of momentary risings because of a tax complaint in this country, but a really important rising . . . I will come back to that later; that has something to do with the character of Locke's doctrine as a whole, so that is not just a case in point. The silence about examples could mean: (a) *really* there are innumerable examples; (b) it could mean there are not so many examples, and a discrimination of examples, when it happened and when it did not happen, would lead to a certain difficulty which Locke is not prepared to discuss here.

Now this much about the remarks you made in your paper [. . .] at least it was thoughtful, but it became a bit speculative when you tried to answer the questions. Generally speaking, I would say that the questions which you raised were questions which had to be raised. But in regard to the answers, there is a certain . . . One has to have someone more experienced, if I may say so, to look in the right direction. But I was very happy to see that you saw the main point, that Locke cannot be merely confused.

[vi] Strauss might have in mind the statement at *Theologico-Political Treatise*, chapter 17: "If it were really the case that men could be deprived of their natural rights [including the natural right of free reason and judgment] so utterly as never to have any further influence on affairs, except with the permission of the holders of sovereign right, it would then be possible to maintain with impunity the most violent tyranny, which, I suppose, no one would for an instant admit" (Elwes translation). The issue of freedom of speech is dealt with at greater length at TTP, chapter 20. On the Turks, see TTP, Preface, and *A Political Treatise*, chap. 6, §4.

Now let us turn to chapter 19 and begin at the beginning. The thesis which Locke makes at the beginning, paragraph 211: a conquest dissolves not only government but society as well. That is a bit different from what he said twenty-six paragraphs before, in paragraph 185, where he spoke only of the dissolution of the government, not of the dissolution of society. Now that is of some importance, as you will see later. At any rate, we are confronted here with one extremely important suggestion, of which Miss —— was fully aware, namely, Locke seems to assert that there can be a society while there is no government. That there can be no government while there is no society is obvious, and is stated by Locke explicitly, but Locke seems to assert that there can be a society even if there is no government. Why must Locke assert that there can be a society while there is no government?

Student: Otherwise he would be taking the Hobbean position, that the dissolution of government leads back to the state of nature; and *this* is supposed to show that man can exist in society without immediately going back into the worst condition: that they still are civilized and so forth.

LS: Yes, but more specifically.

Student: This means that men can act against government.

LS: Yes, as a body. In other words, a revolution, an act of the people, presupposes there is a people while there is no government. A people means a body capable of acting as one, as one body. So Locke's doctrine regarding the legality of revolution under certain conditions stands[8] [or] falls with that supposition that there can be a society while there is no government. Good.

On the same page, 229, in paragraph 211, line 4: society . . . is "one body," a being which can act as one body; and a few lines later, "not being able to maintain and support themselves as one entire and independent body." This exists—this one entire and independent body which can act as a body, exists even if there is no government. The question is: Is this really possible? Can we speak of a one, [an] acting body if there is no government? Let us turn to paragraph 212 on page 229, line 6: "it is in their legislative that the members of a commonwealth are united and combined together into one coherent living body." Does this not mean that it is only by virtue of the legislative, i.e., of the government, that the people is a people? "This is the soul that gives form, life, and unity to the commonwealth." There is no soul in the people if there is no legislative: "for the essence and union of the society consisting in being one will, the legislative, when once established by the majority, has the declaring and, as it were, keeping of that will."[vii] The unity of the will or, in other words, the society being one body capable to act, seems to presuppose the legislative, i.e., the government.

In the first paragraph, Locke says governments are dissolved from within, apart from without. Therefore, he seems to speak only of the dissolution of government But we will see that he is also speaking of the dissolution of society as such.[viii] . . . Who is that contact? He who decides the question of which means are and are not conducive to the self-preservation of

[vii] *Second Treatise*, sec. 212. In the original: "consisting in having one will."
[viii] There is a break in the tape at this point.

each. What is that? What is the authoritative position of what is conducive to the self-preservation of each?

Student: In nature, the appeal to heaven.

LS: That is the state of nature. But when do I cease to be in the state of nature? From the moment I have an appeal on earth.

Student: The legislative.

LS: The legislative. So if there is no legislative, it is hard to see how there can be anything but the state of nature. Let us keep that question in mind.

Paragraph 213: Locke[9] reviews the situation in 1688, as it is easy to see. Now let us follow that up. Paragraph 216, let us read that.

Reader:
Thirdly, When, by the arbitrary power of the prince, the electors or ways of election are altered without the consent and contrary to the common interest of the people, there also the legislative is altered; for, if others than those whom the society hath authorized thereunto do choose, or in another way than what the society hath prescribed, those chosen are not the legislative appointed by the people.[ix]

LS: What is particularly striking in the paragraph, in the light of earlier discussions?

Student: It is unclear whether he is allowing the right of the prerogative to redistrict.

LS: Exactly. He seems to deny it here. Because the point is this: when he says, "or in another way than what the society hath prescribed."

Student: The only question I have there is that in the first part of the paragraph, he seems to allow a little bit of prerogative because he says, "by the arbitrary power of the prince, the electors or ways of election are altered without the consent and contrary to the common interest." Does that imply that without the consent but in the common interest, he can?

LS: If he had said, "without the consent *and/or* contrary to the common interest of the people," there would be no difficulty. But he did not happen to say "and/or." So the consent of the people is needed when the legislative is altered. Now if the society has formally authorized, say, at Runnymede[x] or whatever it may be, and no question that now Manchester is a big city, can be approved as an argument.[xi] There is no question that there is here a complete silence—and I think it appears most clearly from this chapter on the prerogative—and therefore an immense simplification of the political problem.

[ix] *Second Treatise*, sec. 216.
[x] Where King John sealed the Magna Carta in 1215.
[xi] It is difficult to be certain what Strauss actually said here, but his meaning seems clear. Locke's introduction of the need for consent of the people seems to modify what he had said earlier in the discussion of prerogative and to introduce a different criterion for judging when the prince has acted illegitimately. Instead of clarifying his position, Locke has given us "complete silence."

Student: This little matter of the custom originally vested in the executive; and therefore society, so far as it can prescribe anything, originally prescribed the executive to redistrict, if he would. So it would be allowed, wouldn't it? There was never any cognitive act of society saying he could not, and custom would allow him to perform certain acts which might allow an earlier redistricting in the common interest of the people.

LS: But still, consider the phrasing here. Locke surely thought also always of British precedents; he did not merely think of this chapter. That cannot be construed as a merely legal, constitutional law thesis. Doesn't it seem extremely strange that here—compare that with paragraphs 157 to 158, which deal with redistricting and[10] with the enormous difficulties. One could say in the light of this paragraph, an abolition of the rotten boroughs and what James II did to the city of London, with its population, would not be distinguishable. That happens in all political discussions; you must understand that. People become bewildered with the complexities. And therefore simple formulas like that, "*no* discretionary action of this kind," because James II did that with his discretionary powers. We have an example in our time. I do not want to go into their substantive merits, but only as an indication: appeasement.[xii] In a certain situation, appeasement appeared to be *the* blunder; the conclusion: appeasement is a blunder in all conditions. I do not want to go into the question whether [. . .] I only want to show this kind of political thinking that Burke expressed so nicely: "I think that people are always at least thirty years behind in their political thinking."[xiii] Namely, the last impressive event determines their "political categories." That they fitted well this situation does not prove, of course, that[11] [they] will fit any other situation. And therefore, the simple solution which Locke suggests here—which amounts to this: *no* prerogatives regarding redistricting—is of course not intelligent enough, as he has shown himself in another chapter.

In other words, the problem with which he is concerned is this: the need for translegal action, which was clearly admitted in the chapter on prerogatives and the sections preceding it, is now, to put it mildly and vulgarly, played down in order to get a clear case for an indictment of James II or the defense of 1688.

Student: I think that is maybe the reason why in paragraph 217 he introduces the legislative. Previously he said that the king has unlimited prerogatives in foreign affairs. Perhaps he wants to suggest here that there is no place where the king has unlimited prerogative.

LS: I beg your pardon? I see. That is a good point. In other words, this is as it were an allusion to the problem of the prerogative by the introduction of foreign powers. That could very well be. I still believe that the point which I made also is relevant, but Locke might very well have tried to catch two birds with one stone.

This problem with which we are concerned here, that of translegal power, translegal action, is that which Machiavelli had discussed under the innocent name of "extraordinary modes" as distinguished from ordinary modes. He meant by extraordinary modes something which went not without bloodshed, but that of course is not essential: the essential point is the extralegal

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[xii] "Appeasement" is the term used to describe British policy in the 1930s in relation to Germany. Prime Minister Neville Chamberlain avoided confrontation with Hitler when Germany invaded the Rhineland and Czechoslovakia, and in 1938 he signed the Munich Agreement.

[xiii] "I have constantly observed, that the generality of people are fifty years, at least, behind-hand in their politicks." From Edmund Burke's *Thoughts on the Cause of the Present Discontents* (1770), in *Burke: Select Works*, ed. E. J. Payne (Oxford: Clarendon, 1874), 1:8.

character of the action, a ruler or ruling body saving the community against the letter of the law and so forth.

Now what is the immediate context? It is the question of the legal right to revolution. A natural law, of course, but still a legal right. Perhaps this is from Locke's point of view a self-contradiction, as it is according to the opinion of most lawyers in all countries today. What would a legal right to revolution require? It would require that the dissolution of society is something different from the dissolution of government. We are here easily misled and may fail to grasp the meaning of Locke, because the distinction between government and society is so familiar to *us*. I am aware of the fact that the distinction between the people as a political entity and the prince was very common in the tradition and in the actual law, and Locke knew these things. But the people was here not understood as a confused multitude, but what? The estates of the realm. In other words, the people as understood in the traditional notion is already something like government. They are the government without the top, without the head. But already government was there. That of course is not the notion which Locke had. The people means the ruled, the ruled altogether, and not any part of the government, king *or* parliament.

Now when *we* make a distinction between society and the government, we do not think of the medieval distinction between the people and the prince. That is alien to our thought. But still, we believe that society is one thing and another thing is government, and these two things interact in various ways. They are unthinkable without each other, but they are distinct: a society as society can be an acting body without the government. Or we say society is in itself something different from government. What Locke's view implies can be stated in the form of this objection: Can we say that society *acts* if there is no government, or if it does not act through government? To state it simply, we say "a society," and society is somehow understood as a kind of body, a unity, an entity, or whatever you may call it. But Locke presupposes this: To be a being you must be able to act, and you must in fact act. A government acts. Does society act? If society does not act, can it be called a being?

What does our ordinary view of society imply regarding the action of society? As far as I understand this very confused notion, it does not imply any action by society, but instead society is something consisting of action, and these actions are actions of individuals or groups.[12] If we can speak of the actions of society, it would be the recital, the mere recital of the actions of individuals or of part of society. That, I think. In other words, Locke does not yet have our notion of society. Nor is the medieval notion of the people to be identified erroneously with the present notion of society. Once this is accepted, that the action of a society is the recital of actions of individuals and of groups, then you are eventually seduced, if not compelled to say that the government is only part of society. I mean the extreme form in Bentley and such people, where the governmental action is, so to say, this recital of these actions of individuals and groups.[xiv] It would be very interesting to see where the notion of a society in this modern sense emerges, where society is a being and yet a being which does not act but is only the recital of actions of individuals or groups. The distinction between state and society appeared very clearly in Tom Paine, but it appeared also—and that is perhaps more important, for reasons I could very well defend—it occurred more crucially in Hegel. Hegel makes the distinction between government—the regime, you could say—and civil

[xiv] Arthur Bentley, *The Process of Government: A Study of Social Pressures* (Chicago: University of Chicago Press, 1908). This is one of the founding statements in the pluralist theory of politics. Bentley was the subject of an essay in *Essays on the Scientific Study of Politics* (New York: Holt, Rinehart and Winston, 1962), edited by Strauss's student Herbert Storing.

society. Civil society no longer means in Hegel what it means in Locke or in any Anglo-Saxon writer, because the word "civil" is ambiguous in German. Civil society is a market society; and I just wonder how far our concept of society does not make this arbitrary,[13] in the market society. What do you think of that, Mr. Cropsey?

Mr. Cropsey: It sounds very reasonable, but I would say that this is very much so of the things in Locke, that identification of the commercial, of the market situation . . . [xv]

LS: Yes, but it seems to me that in Locke, the fact[14] [of] this interaction of exchangers, let me say, presupposes a government. I know you will say that Locke also suggests that money was introduced prior . . . But I would even then say, one must perhaps reconsider this point.

Mr. Cropsey: Even if it were not the question of money, it seems to me there were compacts anterior to . . . [xvi]

LS: Let us perhaps take up this question later. What I wanted to say is only this. I thought we should reflect for one moment on certain matter-of-course premises of present-day criticism as well as allegedly neutral analysis of Locke. All present-day criticisms, if they are not done by very reflective people, are done on the basis of present-day assumptions. Such an assumption is the distinction between state and society as now understood—clearly or confusedly, that does not make any difference. The real importance of such readings as we are doing is precisely that these readings compel us to think of it, about premises now generally accepted, which should perhaps not be so simply accepted because they contain great difficulties.

Student: I was just wondering, when you were mentioning that about Hegel—in the English tradition, I thought Bradley[xvii] had somewhat the same idea, and yet he seems to be like Locke: vesting virtues in society and distinguishing it from the government in order to allow, possibly, a revolution against government.

LS: I do not know Bradley well enough—I do not know him at all. That would be merely reputation, but I have always heard that Bradley was deeply influenced by Hegel. But that I don't know. That is very common since the nineteenth century, and it is very clear and very explicit in Tom Paine, but Paine with this understanding that society without government is almost self-sufficient. All the real things are done by society, and for some purely marginal purposes—you know, here and there someone is going to forge a check, and then you need a policeman; maybe even a murder, maybe even a war. But in the main, society is perfectly self-sufficient. But that was of course a part of the story: a kind of political theory which verges on anarchy, and that was part of that. We cannot go into that now. The point which I wanted to make was only this: we must not use the distinction between government and society as [it] is now common[ly understood] for the interpretation of *Locke's* teaching regarding [the difference between] government and society.[15] We must be very careful.

Student: If Locke is going to imply that society can be apart from government, can exist apart from government . . .

[xv] The transcriber notes that this is the gist of a mostly inaudible response.
[xvi] The transcriber notes that this is the gist of a mostly inaudible response.
[xvii] This is probably a reference to Francis Herbert Bradley (1846-1924), a philosopher in the British idealist tradition, which drew much from Hegel. His most famous work was *Appearance and Reality* (1893).

LS: He *says* so.

Student: . . . then doesn't he have to admit also that society can also exist in a state of nature, since society in a state of nature exists also without government?

LS: Sure, there are passages which deal with that, and not only with regard to money. If you make a statistic, I would imagine that the passages asserting a social state of nature are more numerous than the passages affecting a nonsocial state of nature. But in such questions,[16] the majority vote, more frequent passages of this kind, is not decisive, for reasons which I have indicated throughout the course but which I cannot go into now. There is no question; you can prove that if you want to. The trouble is that also the opposite can be proven, and therefore you have to make up your mind.

Now let us go on, because I would like to conclude this meeting today, if we still have time, with a somewhat more general discussion. Paragraph 218, end, which is on page 232. Will you read the last sentence?

Reader:
But yet, so far as the other parts of the legislative any way contribute to any attempt upon the government, and do either promote or not, what lies in them, hinder such designs, they are guilty, and partake in this, which is certainly the greatest crime men can be guilty of one towards another.[xviii]

LS: Now what is the greatest crime which men can be guilty of, one towards another? Well, let us say, establish[ing] tyranny, to use a general term. If there are crimes of which men can be guilty one towards another, it is implied that there is also another kind of crimes. Which [kind of] crimes would that be?

Student: Well, individual . . .

LS: Towards oneself. Yes. And? A very common distinction, which everyone knows from his childhood.

Student: I don't know this from my childhood, but society, the state . . .

LS: No, that would not be . . . It is much more simple.

Student: Crimes against God.

LS: Sure. That is more simple, you see. You see here, that is the most interesting example I have ever seen of the influence of social science. I think in every religious education, in every education at this stage hitherto, this was the most . . . the two tables of the Decalogue, for example. Now let us turn to a later passage on page 238, paragraph 230, towards the end.

Reader:

[xviii] *Second Treatise*, sec. 218.

This I am sure: whoever, either ruler or subject, by force goes about to invade the rights of either prince or people and lays the foundation for overturning the constitution and frame of any just government is highly guilty of the greatest crime I think a man is capable of—[xix]

LS: That is all we need. You see, the qualification is dropped. What was originally called the greatest crime of a certain kind is now called the greatest crime simply. I would contend that what happened in the meantime, namely, between paragraph 218 and paragraph 230, properly understood, would explain this great step. You can interpret Locke's change in various ways. One way would be to say that he anticipated Kant: that all duties towards God *are* duties towards man. In other words, a sin against God proper is not possible. *The* duty is a duty towards our neighbors. And the differences between religion and morality merely consist in this: that religiously we fulfill our duties towards our neighbors as the will of God, whereas morally we do not have the religious reference. That *could* be Locke's solution.

Now let us turn to where we left off, the beginning of 219, and 221, where you see here—very strange: "There is one way more whereby such a government may be dissolved, and that is when he who has the supreme executive power neglects and abandons that charge, so that the laws already made can no longer be put into execution."[xx]

And paragraph 221, beginning: "There is, therefore, secondly, another way whereby governments are dissolved, and that is when the legislative or the prince, either of them, act contrary to their trust."[xxi] This is in fact the same, with only a change in the formulation, with the other way, the "one way" mentioned in 219. And now he goes on with the passage: "First, the legislative acts against the trust reposed in them when they endeavour to invade the property of the subject"[xxii] and so on. What is the second point? Did you see that? Where comes the second point? Well, to save time: It does not come. Locke promises number two or number three, but it never comes.[xxiii] So that is also an interesting difficulty to which I would like to draw your attention. But let us now turn to paragraph 219, in line 5.

Reader:
for laws not being made for themselves, but to be by their execution the bonds of the society, to keep every part of the body politic in its due place and function.[xxiv]

LS: I warned you: "of the society," "the bonds of the society"—I ask you, can there be a society without bonds? Go on.

Reader:
When that totally ceases, the government visibly ceases, and the people become a confused multitude, without order or connexion.[xxv]

[xix] *Second Treatise*, sec. 230.
[xx] *Second Treatise*, sec. 219.
[xxi] *Second Treatise*, sec. 221.
[xxii] *Second Treatise*, sec. 221.
[xxiii] Possibly the second point comes in sec. 222 with the words "What I have said here concerning the legislative in general holds true also concerning the supreme executor." See Laslett's note *ad loc*.
[xxiv] *Second Treatise*, sec. 219.
[xxv] *Second Treatise*, sec. 219.

LS: Here we are: "a confused multitude." That was Hobbes's expression.[xxvi] I ask you, what is the difference between a confused multitude and the state of nature? Mr. Cropsey, do not look so angry at me. I know these arguments about the money and so on. I think they have to be considered, but I can only say this: that only shows that there is here an unsolved problem. If it is true that, according to Locke's teaching in chapter 5, money precedes civil society and money is necessarily an act of society—I cannot coin money as an individual—then we are going to have to reconcile that. But I would suggest a solution: perhaps we have to make a distinction between gold and silver, [and money]. And I believe that is what you mean.[17]

Mr. Cropsey:[xxvii] Well, Locke himself would have denied, I think, that the individual can make money. The individual in a state of nature does not make money, I mean in the sense of what is literally true, but it is only by compact that they accept it of each other, and a convention . . .

LS: All right. But that brings up a very interesting question. Is not the very compact which establishes money necessarily identical with the social contract and the establishment of government itself? Could this not coincide? We must not be led astray by the question of the temporal[18] [order] , which could be only an attempt to dissolve the so-called logical element. We must not overestimate this temporal thing. But here we are: when the government is dissolved, the people become a confused multitude. That means, for the doctrine regarding revolution, that revolution is made by a confused multitude, not by the people as an organized body. In the medieval doctrine—of which[19] the legal [still] played a role, in such doctrines as those of Monarchomachus Buchanan, whom he mentions here,[xxviii] etc.—in this doctrine people were not a confused multitude: the people were the estates of the realm. That was the crucial point which Hobbes made and upon which in a way the whole political doctrine of Hobbes turns: without a government, the people are a confused multitude. And he would have said in objection to this medieval construction [that] in this case, if the estates without the prince can replace the prince, then the estates are sovereign. That is not a monarchy, that is an ill-constructed republic, he would say. But this is, I think, a passage of crucial importance.

Student: [. . .]

LS: That is true. But the question is whether, in the theoretical presentation, it can allow, have the proper place for, intermediate stages. That would have to be shown.

Student: I was wondering how one would apply in this particular context Locke's statement that the people are slow to change. Perhaps they go on preserving some of the laws of society without actual enforcement.

LS: Have you never read of the profound discovery by certain modern social scientists according to which in all revolutions the people did not do a thing, really? The utmost they did was they had some vague and latent sympathies. The real revolution was always done by

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[xxvi] Perhaps a reference to *Leviathan*, chapter 18: "And therefore, they that are subjects to a Monarch, cannot without his leave cast off Monarchy, and return to the confusion of a disunited Multitude."
[xxvii] The original transcript does not identify Cropsey as the speaker.
[xxviii] George Buchanan (1506-1582) is mentioned in the passage from William Barclay (1546-1608), quoted in Latin in sec. 232 and in translation in sec. 233. Buchanan was among the Monarchomachi (literally, "those who contend against the king") against whom Barclay's treatise, *De Regno et Regali Potestate* (1600), was directed.

a tiny minority. Have you never read this? So what is observed here is not a decoy. But the question was whether this tiny minority, acting as they claimed on the part of the people, and perhaps really acting with the sympathy of the people, what[ever] that means; if you take this thing seriously, it means it is strictly speaking an act of a small unauthorized minority acting with the presumed sympathy of the majority. And the majority surely, then, would join them in stages rather than in one act. That would not affect the fundamental situation. The problem is this: Is revolution a clearly legal act that requires a clearly identifiable actor? But if the people is only a confused multitude, then you do not have such a clearly identifiable actor, and a revolution as a legal action becomes no longer defensible—I mean, no longer theoretically defensible as an act of the people. It may still be a wise and a just act, but no longer in legal terms.

Student: Is this the reason why Locke insists so much that you have the right to revolution, to see which way the wind is blowing? Before the people is reduced to a confused multitude, this right exists, if the people who become a minority can convince themselves and other people that this is the way things are going.

LS: I see. That in a way answers the difficulty raised by Mr. ——: the compact. We have peace, i.e., people kept together by the law, by the government. Now there is some movement towards dissolution of government, i.e., misgovernment. And parallel to that, to misgovernment—that is, unjust government—there takes place a movement of the people towards the confused multitude. What will happen of course is that the real action will take place in between. A problem mathematically soluble, I suppose, by differential calculus. If you reach the limit, it would of course be too late. But you must get some formula for the characteristic in-between position.

Student: It would be possible to have a revolution before the people ever heard about it, where the government changed in power before society . . .

LS: Sure. Something of this sort happens in most revolutions. And I think even a very popular peasant rising must have a beginning in a certain place under a given leader. Whether they spread and how far they spread depends on all kinds of circumstances, so that the people who said revolutions are acts of the people against the government were not so simplistic as they were presented by modern writers who say this was only [an] action of a minority. That, I think, is clear.

Now let us go on. Although he has said the people become a confused multitude, he speaks in the sequel (paragraph 220) of the people and the society as a matter of course: “when the government is dissolved, the people are at liberty to provide for themselves by erecting a new legislative.” But when the government is dissolved, in that state the people are certainly a confused multitude.

Student: What if the development is not a result of any violence or war? It is simply the result that the legislative is a periodic thing. This given legislative only lasts seven years. What becomes of the people then, of society in general?

LS: That is simple. Since the whole political order remains perfectly intact, the execution of the law is provided for. The means are provided for. There are clear provisions [. . .] the reconvening of the new legislative. [. . .]

Student: But is the revolution necessarily directed towards changing the form of something, or can it be directed strictly towards changing the persons?

LS: If we had a clear [. . .] for the total change, change of the whole constitution, it is very easy to understand the mild changes. Sure.

Student: Does he imply that revolution affairs regard the institution of property, I suppose you would say, and civil society rather than the government and society? What happens to the property . . .

LS: That is a good question. In other words, if you take this literally and you say the government is dissolved, i.e., the legislative is dissolved, the executive is dissolved, and[20] [there is no longer any enforceability of the law]; and since all property depends on this law, property just becomes mere factual possession and ceases to be property. That is the question, surely. And you would say the simplest way to account for that would be to make the distinction between society and government; and therefore revolution concerns only the government. But there is one little difficulty. I have heard of a thing called "social revolution" as distinguished from political revolution. If you put it simply, you can say, of course, quite a few things survive for the security of property, but the distinction between possession and property is extremely endangered. Now in every revolution of a noncommunist kind, what happens? Society, the people who are concerned with property, are extremely anxious to get a government as soon as possible. So long as they are without government, so long as there is no proper source of judicial power and so on, property is insecure. One can state Locke's positive answer simply as follows: Of course property in a way survives, but it becomes very precarious; but the precarious character of property is the clearest kind of a state of nature.

We must not underestimate the importance of government. That is the one lesson, I believe, we learn from Locke. And somehow to believe in a quasi-self-sufficiency of society, that is the one danger of the so-called liberal tradition—I mean, not the liberal tradition as affected by the New Deal or the welfare state, but the older liberal tradition.

Student: The reason I asked this question about the legislative and the periodic legislative: in the last sentence of the *Treatise*, he seems to maintain that even when a temporary assembly or legislative . . . the sentence at the bottom of 246, when the time runs out for this legislative, that the authority reverts to the society. Even in that case it reverts to society; in that case, "the people have a right to act as supreme and continue the legislative in themselves, or erect a new form, or under the old form place it in new hands."[xxix]

LS: No, that means something different than a periodic parliament. He means if they have said this whole scheme of government is only temporary. In other words, there are provisional governments. I remember there was one in Russia in 1917. Now if the government is explicitly declared to be provisional, then of course it cannot make itself permanent without further ado, because if you have periodic government, the very periodicity implies permanence of the institutions.

Now let us go on. Here on page 233, bottom, which is in paragraph 222, he refers to "the supreme executor, who having a double trust put in him—both to have a part in the

[xxix] *Second Treatise*, sec. 243.

legislative and the supreme execution of the law." That, I think, has to be compared with[21] paragraph 215, the chapter in which there is silence about the prerogatives. That was the point—again, there was nothing said about the prerogatives, the point which Miss —— made.

In paragraph 223 we find some observations about the people, namely, how very unwilling, how slow they are: "This slowness and aversion in the people to quit their old constitutions." That is a crucial point. Locke is less afraid—that is the great theme—less afraid of the people than of the ruling prince or the ruling few. And he provides the security against rash action by the majority, the idea being, frankly speaking, the people are the opposite of rash, and therefore this is not the political danger. I wonder whether this reference to the aversion of the people to quit their old constitution is not also a reason why Locke states his own political theory in such a way, so close to the British practice of the time. Or to state it in the form of a question: Was not Locke perhaps much more favorable to republican government than appears in this book—that he made, as it were, a compromise between what he would have wished and what he regarded as feasible in the late seventeenth-century in England? The only objection to that I see is the importance he attaches to a one-man executive. But it is clear that the one-man executive is perfectly compatible with republican government, as we know not only from the United States but also from earlier occasions. Think of the Dutch order of the—how do you pronounce it in English?—*Stadtholder*, who was a republican magistrate rather than a [. . .] monarch.[xxx] And that was well known at that time.

As for this passage in 224: this hypothesis, "no more than any other hypothesis." What are the hypotheses? I believe there was a certain misunderstanding here. What is Locke's hypothesis[22], and what is the alternative hypothesis? The Lockean hypothesis, I would say, is this: "the foundation of government" is laid "in the unsteady opinion and the uncertain humour of the people" (beginning of paragraph 223). I stated the Lockean hypothesis as it would be stated by his opponent. The foundation of government is laid in the people. What is the alternative hypothesis? That is very clear: the foundation of government is divine or sacred. And he asserts that *his* hypothesis, that government is derivative in its entirety from the people, is more reasonable for the good of the people than the alternative hypothesis. The interesting thing is that he calls them hypotheses here. You must have observed, although you have not noted, the many or at least the interesting references[23], if you can call[24] [them] references—[let us say] *premonitions* of the Declaration of Independence. For example, in paragraph 225, "if a long train of abuses . . . and artifices, all tending the same way, make the design visible to the people." That is partly, literally of the text of the Declaration of Independence.[xxxi]

At the bottom of this page you find the nice expression, "the state of nature or pure anarchy," which is of course not surprising but is at any rate much clearer than anything Locke has said about this subject before.[xxxii] Dissolution of government, anarchy, the *absence of government.* The dissolution of government *is* therefore the state of nature, mitigated in practice by the recollection and nearness of the state of civil society. But anarchy is already there, and if it were permitted to go on it would eventually get to the state of nature with all its

[xxx] The stadtholder (Dutch, *Stadhouder*) was the provincial executive officer in the Netherlands from the fifteenth through the eighteenth century.
[xxxi] "But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism," etc.
[xxxii] *Second Treatise*, sec. 225.

inconveniences. Therefore, people are so anxious to bring the revolution to a close for this reason.

For the state of nature, I think we find also some other remarks in paragraph 226 and paragraph 227. The center of paragraph 226: "when men, by entering into society and civil government [you see, that seems to be a simultaneous act—LS], have excluded force and introduced laws for the preservation of property, peace, and unity amongst themselves, those who set up force again in opposition to the laws do *rebellare*—that is, bring back again the state of war,"[xxxiii] i.e., what precedes civil society *is* the state of war. Whether the state of war in its turn was preceded by a still earlier state of nature which was a state of peace is a question which we cannot now discuss any more. You see also in the next paragraph, line 4 from the bottom, these people, "by removing the legislative established by society . . . they untie the knot and expose the people anew to the state of war."[xxxiv]Again, the state preceding civil society is the state of war.

Now in paragraph 230, line 5: "till the mischief be grown general, and the ill designs of the rulers become visible, or their attempts sensible to the greater part, the people who are more disposed to suffer than right themselves by resistance are not apt to stir."[xxxv]Again we are reminded of the Declaration of Independence: "who are more disposed to suffer," if I remember right.[xxxvi] Here we find a remark about the character of the people. That passage was quoted by Miss ——. In other words, the people are basically much more sensible than the rulers. That is, at least, the official thesis of Locke to justify his whole policy. Whether this would not have to be rephrased on the basis of a deeper understanding of Locke is another question. I may return to this later.

Look at paragraph 232, where the quotations are literal. But I have not looked up Barclay himself, and it is perfectly possible that the context from which these things are . . . and the translation is also unimpeachable.

Paragraph 234, page 241, top: of what does this remind you? That is also one of these passages [. . .] But is it not strange, such a paragraph? I mean, why make this an independent paragraph, after having quoted Barclay? You see what he does: in paragraph 232, we have his own text; then he quotes Barclay in Latin. In paragraph 233, there is only Barclay in English translation, and then paragraph 234, the closing remark is made in an independent paragraph. That reminded me a bit of some chapters in *Tristram Shandy* which also were very strange.[xxxvii]

Paragraph 235, beginning. He notes two things in Barclay: that the revolution must be done with reverence. And that he makes clear very nicely, that it is very hard to strike a king with reverence—although in the case of Charles I some reverence was shown, as you may know, at the execution, but he would say that this is a relatively minor point of etiquette compared with the massive fact. Whether Locke is not a bit too cynical here, I wonder. I mean, if you compare the way in which that happened in France, where all sorts of people were executed,

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[xxxiii] *Second Treatise*, sec. 226

[xxxiv] *Second Treatise*, sec. 227.

[xxxv] *Second Treatise*, sec. 230.

[xxxvi] "[A]nd accordingly all experience hath shewn that mankind are more disposed to suffer, while evils are sufferable than to right themselves by abolishing the forms to which they are accustomed."

[xxxvii] *The Life and Opinions of Tristram Shandy, Gentleman* (published in nine volumes from 1759-1767) by Laurence Sterne (1713-1768).

and I think it will always be to the credit of the Puritan revolution that they did not use *this* kind of bestiality which was used in France in 1792. But from a massive practical point of view, Locke has got a point, surely: that killing is killing, whether done with or without reverence. But what he does not note is that Barclay grants the right of resistance only to the people, not to the individual. Barclay simply follows here this older tradition according to which the people, i.e., the estates of the realm, are a political, legal institution. The individuals as individuals have no right. There were of course extreme views among the Monarchomachi, according to which also an individual could do that, but the more common view was that the action must be left to the main and healthy part of political society. When Locke omits that, I would say he has no objection to *this* limitation, namely, that the individual as individual is not free to act, for reasons of his own. You remember, we have read this discussion of [the question]: Can the individual as individual resist a tyrannical government? Legally, yes—I mean, on the basis of natural law, yes, but practically his right is nugatory. Now we have learned today, the majority can act; in the case of the majority, the right is not nugatory. On the basis of what we have seen today about the people as a confused multitude—and that applies, of course, to the majority as well, as a confused multitude—we would have to say a group of individuals acting with the presumed assent or the expected assent of the majority, that is not nugatory and therefore legitimate because [. . .] So the intrinsic right won't do because the individual may have the perfect right to rebel, but that is nugatory [. . .] The majority: where the majority is not a clear thing after the dissolution of government, it is a confused multitude. In fact, it will be a minority acting, taking a gamble that the majority will accept or acquiesce in the revolution of the [few].

Student: I think that Locke speaks clearly in paragraph 131 of the *First Treatise,* where he says that in a state of war between societies, only the supreme power of society can make peace, but in a state of war *not* in political society, that is, where the political society has been dissolved, he that has special powers by consent may make war and peace.

LS: If you look at paragraph 243, the last paragraph: "the power that every individual gave the society when he entered into it can never revert to the individuals again as long as the society lasts, but will always remain in the community." Locke does not think here of [Tönnies], the German sociologist who made the distinction between society and the community, the community being a form of premodern personal group, and society being an entity consisting of atomistic individuals, the modern society.[xxxviii] You must have heard of that distinction. It is very well known. Locke does not think of that, of course. Society goes over to community, because without this there can be no community, no commonwealth. And here Miss —— rightly points out that the commonwealth is, of course, clearly political society. So this transition from society, which could mean prepolitical society, society without government, really does not exist. And later on, at the end of this chapter, towards the end of the paragraph, he[25] [states] again, "it reverts to the society, and to the people."[xxxix] This deliberate vagueness as to whether the people is a legal actor or only a confused multitude is of course deliberate.

[xxxviii] Ferdinand Tönnies (1855-1936), German sociologist best known for his 1887 work *Gemeinschaft und Gesellschaft* (*Community and Society*), in which the distinction Strauss mentions is developed at length. He also wrote a work on Hobbes (Stuttgart: Fromann, 1896) and edited Hobbes's *Behemoth* (London: Simpkin, Marshall, and Co., 1889).

[xxxix] *Second Treatise*, sec. 243. In the original: "it reverts to the society, and the people have a right to act . . . "

Now a few points of a more general character. We have found a number of crucial contradictions in Locke's *Civil Government* as a whole, and in particular in the *Second Treatise*.[xl] Now not every one immediately, but the primary ones can be reduced to this simple opposition, say—no, make it simpler, because "government" has sometimes a clarity which other terms do not have.[xli] That chair stands for Hooker, and that chair stands for Hobbes.[26] Hobbes frequently mentioned Hooker as well.[xlii] What Locke thought is somewhat in between Hooker and Hobbes. This time I can make these diagrams which I couldn't make last time because I had to make it short. [LS writes on the blackboard] Here are certain political proposals of[27] [Locke]. *No taxation without representation*, to take a very concrete one. If we trace that to its principles, we find two different sets of principles. One is a traditional natural law teaching, reminding of Hooker and various others. The other[xliii] is where *the* foundation is the natural right of self-preservation and nothing else. Here you have a dividing fraction, an order of which[28] self-preservation is a part, and rather the *duty* of self-preservation than the right of self-preservation[29], the duty of self-preservation being a part of the larger duty of preserving all mankind. From this point of view,[xliv] man would be by nature social, a member of the all-comprehensive society, mankind. From *this* point of view,[xlv] though, man would have no obligations to any other human being not derived from calculation and/or compact.

Now these propositions were described some time at the beginning of this course, and I hope you will remember them. I would regard it as safer, in order not to be fooled about what Locke is driving at, and in addition, as the only thing which is compatible[30] [with] the general theme of his thought as a whole, to reduce these [. . .] to their true basis: the Hobbean principles are the true basis of Locke's thought. We have learned that Locke quoted Hooker and failed to quote Hobbes, for the very simple reason that to quote Hobbes would have meant the end of any effectiveness and quoting Hooker meant the beginning of the greatest effectiveness.

But the question is: Can Locke really be understood on the basis of such a natural right as self-preservation, which can be enlarged in perfect agreement with Hobbes's principles to arrive at comfortable self-preservation, if such comfortable self-preservation is possible? Because from Hobbes's point of view, only a great fool would prefer uncomfortable self-preservation to comfortable self-preservation. In other words, you have a lower limit and an upper limit: Self-preservation at any price; and a possibility of almost infinite expansion—[in the direction of] comfortable self-preservation—almost infinite expansion, because there can always be new gadgets which can make life ever more comfortable, or at least people believe that they will make life more comfortable.

Let us use another term for that, a broader term: pursuit of happiness. Pursuit of happiness as defined by life, liberty, and property. The idea being—I mentioned this last time—that pursuit of happiness is undefinable, because everyone has another notion of happiness than

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[xl] As discussed above, the title *Civil Government* applies strictly speaking to the *Second Treatise*; Strauss here deviates from this usage.
[xli] Strauss is writing something on the board, then apparently thinks better of it.
[xlii] In the transcript, "Hobbes" and "Hooker" are reversed.
[xliii] The other set of principles, that is.
[xliv] That is, the latter (self-preservation as duty).
[xlv] That is, the former (self-preservation as right).

everyone else, a thought developed by Locke at length in his *Essay Concerning Human Understanding*. So happiness is ill-defined, and therefore it does not make sense to—[xlvi]

. . . comes in by the consideration that however you may define happiness or understand happiness, in each case you need (a) life, (b) liberty, (c) property in order to become happy. That is certainly the premise from which Locke starts; and if we would say that we know some of these people[31] who think of happiness in such a way that life, liberty, and property are nothing to them, he would say these people are so few as to be uninteresting, and in the majority of cases people need to have life, liberty, and property as a condition of happiness. And on this basis we can get a clearly defined political doctrine.

Now what is the basis? The basis is this: that the desire for happiness itself is overpowering, and hence must be granted. In this case the is and the ought coincide because of the overpowering character. You cannot raise the question, "Am I entitled to desire happiness as I understand happiness?" because you *have* to; therefore it must be granted. To quote the very famous phrase of Hobbes which applies to the right of self-preservation: man tries to defend his life with a power which is not more than that with which a stone [. . .][xlvii] a stone falls down to earth. That is an inescapable necessity, which therefore must be granted. Here you have a complete coincidence of is and ought, something which is unimpeachable because of its unavoidable necessity. Fundamentally the same is said by Locke about the desire for happiness. But here we come up against a very great difficulty, which is a difficulty in Hobbes and Locke equally. I take the example from Locke's early *Essays on the Law of Nature*, the Hindu wife who prefers a violent death to living after the death of her husband. Generally speaking, there are people who find their happiness in the sacrifice of life, liberty, and property. How can Hobbes and Locke argue that? They have one way of arguing which is given massive plausibility—and this plausibility is underlying a great mistake—and they also have a rational argument. The massive argument is that most people most of the time are wholly unprepared to sacrifice life, liberty, and property, and that is enough for political teaching. Now this kind of argument would in its formal character be proper from Aristotle's point of view, I mean, from a really *political* thinker, but it is not proper for these mathematical political scientists [such] as Hobbes and Locke. Now how do they get out of this fix?

Student: Tradition overriding [. . .] the culture.

LS: That is exactly it. Let me lead up to this point. Hobbes discussed this subject only in an indirect way, namely, by (in the *Leviathan*) clearly contradicting himself. Such a relation is discussed by Hobbes in the form: fear of death, fear of violent death. And Hobbes had his good reasons for giving it this negative form because the value, the power of self-preservation appears most clearly when we actively fear our destruction. At any rate, it is practically identical with self-preservation. Now Hobbes says there are two kinds of fear: one is the fear of violent death; the other is what he calls the "fear of powers invisible"—that means religion. Now regarding this subject, there are two contradictory statements in the *Leviathan*; if I remember well, in chapters 14 and 29. In one case he says the fear of powers invisible is stronger than the fear of violent death; and in the other case he says just the

[xlvi] There is a break in the tape at this point.

[xlvii] The transcriber notes that Strauss uses a Latin phrase here. He appears to have in mind *De Cive*, 1. 7: "*idque necessitate quadam naturae non minore quam qua fertur lapis deorsum*."

opposite, that the fear of violent death is stronger than the fear of powers invisible.[xlviii] This is, I am sure, a deliberate contradiction. He states it very well as follows: under certain *conditions* the fear of powers invisible is stronger than the fear of violent death, namely, when people *believe* in powers invisible. But if this belief is a wrong belief, that means the fear of violent death is the strongest power in enlightened men, or in rational men. That is what you were driving at: traditions are capable to overpower nature, indeed. But if we want to act rationally and not merely on the basis of tradition, we have to see what would be the right thing independently of any traditional notions. That is the solution of the problem, and therefore the simple empirical refutation, like the Hindu wives, does not touch it, because if the Hindu wife were enlightened, she would run away from the pyre as Hobbes and Locke implied.

Let me say this. Natural right as understood by Locke and Hobbes is the right which only sensible men would claim and which they would grant to everyone else. Natural right is not a right which is in fact claimed by everyone. It should be claimed by everyone, but it isn't. Therefore enlightenment, or whatever you would call it, is indispensable for this natural right doctrine. Only on this basis, I think, can there be a fruitful discussion of the Hobbes–Lockean doctrine. A merely so-called empirical refutation does not suffice, at least not on this point; in other points, of course, empirical discussion would be sufficient. If we grant that—if we do not go into a discussion of this famous premise, the natural right of self-preservation which branches out as it were into the right of property and, naturally, liberty—then on this basis, Locke says it is possible to get a much better solution than Hobbes has. Hobbes saw clearly the actual necessity of government, and of the government unrestricted by any positive law—because the government being the legislator, the giver of the positive law cannot be bound by the positive law—and also in *fact* unrestricted by natural law. But Hobbes came to this hopeless difficulty, that he had to admit *and* to deny the possibility of distinguishing between non-tyrannical and tyrannical government. The only thing he could say [was that] absolute subjection to government is necessary because peace is *the* condition of self-preservation. But if the government itself disturbs the peace by killing you, Hobbes had then to admit that the government should not do that. And in the moment he admitted that, or in precise terms, that the government is under a natural law obligation to be peaceful, namely, [toward] its own subjects, he had a criterion for distinguishing between tyrannical and non-tyrannical government. The government which made peace but which treated its subjects in a nonpeaceful spirit was fundamentally tyrannical. And Hobbes had to deny that an objective distinction between tyrannical and non-tyrannical government could be made. And he never spoke of that.

Locke tried to do better and [. . .] to show how the distinction between tyrannical and non-tyrannical government can be made in a politically accepted way. His general answer, as you know, is this. Let us put it simply. The supreme power must be in the hands of the people, freely elected by the people; of men who have very short tenure of office, legislative office, and therefore will suffer from the same laws which that would make. A certain difficulty arises here, because the nature of political affairs requires certain discretionary power in the

[xlviii] In *Leviathan*, chapter 14, Hobbes distinguishes between "the Power of Spirits Invisible" and the power of a man with whom one has broken faith; "Of these two, though the former be the greater Power, yet the feare of the later is commonly the greater Feare." In chapter 29, Hobbes states that "because the fear of Darknesse, and Ghosts, is greater than other fears, [the spiritual as distinct from the civil authority] cannot want a party sufficient to Trouble, and sometimes to Destroy a Commonwealth." Religion is defined in *Leviathan*, chapter 6 as "*Feare* of power invisible, feigned by the mind, or imagined from tales publiquely allowed."

executive. We have discussed that. But Locke would here still say in answer to the criticism: You cannot do better than that. That belongs to the nature of human affairs, and you have to take that risk. A government which is strong enough to defend life, liberty, and property may also use its strength for endangering. That is a fine line . . . A foolproof solution is not possible, but the best solution is to lodge the supreme power in the representatives of the people. In other words, Locke claimed there is a fundamental harmony between the private interests and the public interest, and he had shown how that can be done. Under such a condition, say, in a fundamentally republican condition, that is the main point: such a harmony can be achieved and is in principle achieved. There cannot be arbitrary acts because every act of the executive against any individual must have been made[xlix] by the legislative assembly; and the legislative assembly is forced by this situation not to make [arbitrary] laws because they themselves will have to suffer.

In this present day—I do not believe in Locke's doctrine for other reasons, but I would like to consider for one moment what is usually done to the Lockean doctrine by the present-day political scientists. And there I wonder whether they do justice to Locke. What are the objections to Locke which are made today? I suppose the most massive objection would be this: a harmony between a private and public interest, between the interest of every individual and the public as a whole, is impossible. Is that not said? In other words, the public interest will always be a sectional one. The section may be the majority, but it will always be sectional. Could this not be the objection made by Bentley, when everyone will [. . .] Bentley?

Student: Bentley did not say any such thing about that . . .

LS: I know. But they tried to present it as that, and from this follows his alternative.

Student: But just because it is sectional doesn't mean it is against the directive of society.[l]

LS: That is the point. I think I mentioned that last time. The question is: If the private interest is defined in terms of the wishes of individuals or of a section, then of course there must be a conflict. Every child can see that. If everyone's wants are what the traffic will bear, there must be conflict. But Locke's definition is a sensible definition. He said life, liberty, and property—they are proper. He did not guarantee or claim to guarantee the same amount of property or the same level of subsistence to everyone. That would not be the function of government. If someone possesses property—and to some extent everyone possesses; even the poorest beggar owns something. That does not matter; it is still property. In other words, the question is this:[32] [Whether] Locke, in his definition of the public interest, i.e., life, liberty, and property, without any regard [to] how much property [and] whether everyone has or whether someone does not have property, whether this was not a bit too legal, [and] whether by considering this problem of property certain complications arise which are in an exaggerated way answered by Bentley and other criticisms. That would be one point.

But let me also take another example, of which Locke must have been aware. What about slavery? I think it is fair to say that from Locke's point of view the slave gets not only a raw deal but a very unfair deal, because he has no protection of his liberty. On the contrary: liberty is denied to him by the fact that he is a slave. And of course there is no possibility of

[xlix] That is, must have been authorized by the legislative assembly.
[l] The transcriber notes that this is the gist of a mostly inaudible statement.

getting property, and even his life is precarious according to Locke's definition of slavery. Now what is Locke's teaching on that? I think that would be an example of great pertinence, because Locke was aware of the fact and he discussed it. What about that? What does Locke teach?

Student: Isn't there one place in particular where he distinguishes between the servant and the slave? The slave is the one who committed a crime against society and then was thrown out, as it were, so that he is outside the protection. It is actually a punishment.

LS: Sure. I believe we all allow that some people are justly deprived of their liberty. I think there are very few people who say the inmates of jails and insane asylums should have their freedom. That was [. . .]'s wonderful idea, to emancipate the leper and allow him to carry slaves and to go out of the country, which he regarded as a virtuous act. But still, Locke gave another definition which is more pertinent: slaves, he says, are people captured in a just war. They have abetted an unjust war of their government. So in other words, they are plain criminals. There is no difficulty[33] [arising on] this score, because as Locke understands civil government, it is an institution which necessarily and legitimately has institutions like capital punishment and jails and penitentiaries. That is not difficult at all for Locke. But what about the men made captive in a just war? What about the just war? If sovereign states are in the state of nature and there is no possibility of an impartial judge as between states, the distinction between the just and the unjust war becomes very hard to define—in the majority of cases, impossible, in fact. You see, we must not forget, we have seen in our century, especially in the beginning of the Second World War, such manifest cases of aggression—although I do not want to identify the just war and the war of defense, but let me use the common mistake for the sake of illustration—such atrocious cases that we forget that other wars, most wars, were not this simplified, where there were really important grievances. Think of the whole French-German [. . .], where you cannot possibly say where and when aggression starts. For instance, was[34] [it] aggression when they tried to win over from France Alsace-Lorraine, which had been conquered by the French in the [Thirty Years'] War under very spurious [pretenses]?[li]And of course in the meantime, they had found another solution, namely, let the people on the spot decide, the Alsatians and the Lorrainers. [. . .] This leads to other difficulties, as you know; for example, the breakup of the [Austro-Hungarian Empire], and so on.

So there are very great difficulties for the distinction between the just and the unjust war under Locke's conditions, and that effect of course is stated [. . .] I mean, therefore, the status of slavery. This is an obvious difficulty. One could say—which is theoretically not good enough, but practically is sufficient—that this was no important question at all, as far as England, at least metropolitan England in the seventeenth century, was concerned, although in certain British colonies there might be difficulties with that. But otherwise, if you disregard then the problem of slavery, I think that Locke can very well say that he has shown[35] how the public interest can be reconciled with the[36] [private] interest by making a distinction between the interests of various people or groups as defined by their appetites and their legitimate interests. That we must not completely overlook. The difficulty in the philosophy of Locke, then, rests in the fundamental principles rather than in the position as developed. However, it would be very unfair to the later critics of Locke . . . What I want to say is this: this issue of the social compact, the point where Hume stops, is not essential to Locke's doctrine. That is a kind of use of traditional formulae for making it more acceptable. The main point is not that

[li] A handwritten notation in the original transcript proposes "fighting" here.

people have voluntarily compacted; the point is that people, rational, sensible people, are reasonably satisfied because the rational interests of every individual—life, liberty, and property—are taken care of. Whether this has originally happened through these occasions of conquest or through really a free agreement of the people[37], the argument is ultimately not relevant.

But there is another point which is decisive. Locke's point is that the perfect emancipation of acquisition of property, for applicable circumstances, as we can say, is justified by the beneficent character of that emancipation. The poorest day laborer in England is better clad, better housed, better fed than the king of the savages. No one has the right to complain even if he is the poorest day laborer in England. Now the question is whether that is so, whether that has always remained so. That was of course the beginning of the social criticism of Locke's scheme and the social criticism which is now admitted by quite a few people who are not socialists at all. But that is, I think, the most important practical point of criticism. I do not speak now of the theoretical points which were raised especially by the German philosophers against any political theory which leaves it at life, liberty, and property in the Lockean sense and did not appeal to higher moral principles as the basis of civil society.

Now let me see whether there is any other point. If I may say a word again about the point we discussed last time, on the basis of last time's paper. I think, if I understood you correctly, your argument was based on the premise that a solution can be found in which a revolution cannot possibly have a rightful place. That is the way in which I understood it. Whereas there can be no question in Locke that however difficult or impossible it may be to give a positive law as such to the right of revolution—and I believe he would have denied that—yet that there is something like a natural right to revolution, Locke certainly means this. From Locke's point of view this right is coeval with civil society. However good that nation may be, it may deteriorate and decay so that nothing but such violent action can claim [. . .] Now my impression is this: that the solution which you regarded as preferable to Locke's, because you took it as a standard for judging Locke, is based on the premise that if the government is always responsive to the will of the people, to the will of the electorate—but maybe to the majority of the electorate, and if by its constitution compelled to be responsive there can never be any tyranny, and therefore there can never be any right to revolution.

That was helpful to me, this concept, because I saw more clearly than I saw before how[38] [radical] the difference between Locke and a certain kind of present-day democratic thought is; namely, that for Locke, the nonresponsiveness of the government to the majority in important areas is *as* important as its responsiveness to the *interests* of the people. The will of the majority regarding a given issue, a given policy, is not identical with the long-range interest of the majority. In other words, Locke took it for granted that the government—and now I mean both executive and legislative—must have a considerable independence of the momentary wills of the people—and [by] "momentary" I mean also a few years—if there is to be any government. Locke was not a [monarchist], but Locke was *very* remote from anything like direct democracy; and I just wonder whether your criticism is not based on a position coming very close to direct democracy. We do not have to have government by referendum to have direct democracy. So that, I think, would also mark one important difference between Locke and certain tendencies of present-day thought.

I also thought of this problem when reading some time ago [Dahl's] *Preface to Democratic Theory*, where you find a would-be criticism of James Madison, and there I also had the same

feeling.[lii] [Dahl] criticizes Madison on the basis of some present-day [notions of the] welfare state without wondering whether Madison's position does not contain implicitly a criticism of the welfare state which might very well deserve to be listened to. Maybe Madison is wrong; but it cannot be shown on the basis of the dogmatic assumption that the British Labour Party is right, if you see what I mean. [The importance of the great texts in the history of philosophy] consists precisely in the fact that they force us to see that the assumptions with which we begin are not necessary to make, that one can also look at them from another side. We may very well return to our initial assumptions, but then we would do it [more reflectively] and far more wisely than when we began.

[1] Deleted "the Obligation of Change."
[2] Deleted "more."
[3] Deleted "he speaks."
[4] Deleted "he discusses."
[5] Deleted "of."
[6] Deleted "Locke may have asserted here something."
[7] Deleted "for."
[8] Deleted "and."
[9] Deleted "discusses the question . . . he."
[10] Deleted "which deals."
[11] Deleted "it."
[12] Deleted "Society is, as it were."
[13] Deleted "in the market."
[14] Deleted "that."
[15] Deleted "as different."
[16] Deleted "a mere—."
[17] Moved "And money."
[18] Deleted "figure."
[19] Moved "still."
[20] Changed from: "the executive is dissolved, and the law—there is the non-enforceability of any kind any more"
[21] Deleted "the reference—I thought so, but I am not sure—with."
[22] Deleted "one."
[23] Deleted "to the."
[24] Deleted "that."
[25] Deleted "speaks."
[26] Moved Hooker and Hobbes.
[27] Deleted "Hobbes."
[28] Deleted "the."
[29] Deleted "and."
[30] Deleted "to."
[31] Deleted "who are not concerned with."
[32] Deleted "was."
[33] Deleted "arriving at."
[34] Deleted "this."
[35] Deleted "the case."
[3636] Deleted "public."
[37] Deleted "is."
[38] Deleted "radically."

[lii] Robert A. Dahl, *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956).